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Box 116
In the Supreme Court of Nova Scotia,
1881.

ON APPEAL

From the County Court, District No. 1.

INSOLVENT ACT OF 1875 AND AMENDING ACTS.

In the matter of the Estate of JOHN R. MURRAY, an Insolvent,

AND

ALEXANDER McDONALD, Claimant,

AND

JAMES G. FOSTER, Assignee of said Insolvent, Contestant.

ALEXANDER McDONALD, Claimant, Appellant,

AND

JAMES G. FOSTER, Contestant, Respondent.

F. A. LAURENCE, Attorney of Appellant.

N. H. MEAGHEE, Attorney of Respondent.

HALIFAX, N. S.

WM. MACNAB, LAW PRINTER, PRINCE STREET.

1881.

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Agreement
Agreement
Donation
Additional
Agreement
Agreement
Assignment
Answers

Bill in Equity
Bill of Writ
Bond, Book
Bond from
Bell's evidence

Crib-wharf
Certificate
Claim of
Claimant's
Condition
Contestant
Contract
Contract of
Cross Section

Deposition

Detail plan

Evidence of

INDEX.

	PAGE.
Agreement of Counsel (O'Doherty and Lawrence) to examine <i>viva voce</i>	91
Agreement A, under which work claimed was performed by McKenzie, Mc-Donald & Co.....	160
Additional clause W.	162
Agreement of Alex. McDonald & Co. and Thos. Boggs <i>et al</i> (M L).....	145-147
Agreement with McKiel (B B)	105
Assignment of sub-contract to Mitchell & Oakes (C C).....	106
Answers to Interrogatories by P. Grant	75-83
" " J. Jillett	84-90
Bill in Equity (A 2).	147-157
Bill of Works (N N).....	130-134
Bond, Boggs <i>et al</i> , to the Queen (L L).....	116-117
Bond from Tuck to Crown (E E E)	161
Bell's evidence	96-99
Crib-wharfing by Bell.....	99-103
Certificate of Judge Johnston	2
Claim of Claimant.	3-4
Claimant's Evidence	11-39, 59-63
Conditions of Contract for Sections No.'s 17, 18, 19 and 20	128-129
Contestant's Evidence	39-59
Contract A. of McKenzie, McDonald & Co., under which work was performed...	160
Contract of Boggs <i>et al</i> . with the Queen (H H).....	106-109
Cross Sections—Plan "D."	
" " (original), 247 + 259—Plan "O. O."	
Deposition of Witnesses taken at Ottawa	75-99
" Bell	90
" " Exhibit "D," annexed to deposition of.....	99-103
" Jillett.....	92-95
Detail plan Crib-wharfing (K)	
Evidence of Alexander McDonald, Claimant.	12-24
" Wm. Delaney.....	24-25
" Gordon Cook	25-26
" Jno. W. Murray.....	26-27
" Jas. O'Dell.....	28-33
" C. H. Palmeter	33-34
" Wm. Tremain	34-36
" Wm. Walters.....	36

THE

of the

of the

of the

of the

of the

of the

of the

Evidence of Edw'd Whidden.....	36
" Bernard Mahoney.....	37-38
" John R. McKenzie.....	38-39
" Contestant's Evidence.....	39
" Peter Grant.....	40-49
" Chas. Graham.....	49
" Donald Sutherland.....	49-50
" Robert P. Mitchell.....	50-55
" S. D. Oakes.....	55-58
" John R. Murray.....	58-59
" Rebuttal.....	59
" John R. Fisher.....	59
" Wm. Watters.....	60
" Alex. McDonald.....	60-62
" Jas. O'Dell.....	62-63
" William Tremaine.....	63
" Peter Grant under Commission.....	75-84
" John J. Hiett.....	84-90
" " <i>nova voce</i> Examination.....	92-96
" Leonard G. Bell.....	96-99
Exhibit "A" (Contract).....	160-161
" "E" (deposition of Bell).....	96-98
" "C" (profile).....	
" "D" (cross sections).....	
" "E" Letter Thos. Boggs & Co.....	104
" "K" Detail plan Crib-wharfing.....	
" "S" Detail plan Rip-rap.....	
" "T" Memo. of Peter Grant of work shown on plan between 247-259..	104
" "W" Additional Clause to Contract.....	162
" "V" Notice of re-measuring work.....	104
" "Y" and "Z" Notice to produce (not printed).	
" "X" Letter from Thos. Boggs & Co. referring to buying out Davis...	105
" "B B" Agreement with McKiel.....	106
" "C C" Assignment of sub-contract to Mitchell & Oakes.....	106-109
" "H H" Contract of Boggs <i>et al.</i> with the Queen.....	110-116
" "K K" Tuck's Contract with do.	116-117
" "L L" Bond of Boggs <i>et al.</i> to Queen.....	117-128
" "M M" Specifications.....	130-134
" "N N" Bill of Works.....	135-136
" "P P" O'Dell's Abstract Measurements—162-380.....	137
" "Q Q" O'Dell's Abstract of Quantities—from (P P).....	138
" "A 1" Abstract Measurements furnished by O'Dell to Mitchell.	139
" "B 1" " " ".....	140-141
" "C 1" " " ".....	142
" "F 1" Particulars of Borrowing, Stations 162-380.....	142
" "G 1" " Spoil—162x380.....	142
" "G 1" O'Dell's tracing of Cross-sections.....	
" "H 1" Tremaine's Measurements from Cross-sections.....	143

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Exhibit "K 1"	Tremain's Measurements of Crib-wharfing from Cross-sections 340x350.....	144
" "M 1"	Agreement of Alex. McDonald & Co. and Thos. Boggs <i>et al.</i>	145-147
" "A 2"	Bill in Equity.....	147-157
" "C 2"	Grant's Measurements.....	72-73
" "D 2"	" " " ".....	73-74
" "B B B"	Mitchell and Oake's Account.....	164
" "Z Z"	Statement of admissions.....	165
" "C C C"	Copy Grant's Measurements furnished McDonald.....	166-167
" "E E E"	Bond—Tuck to Crown.....	167
" "D D D"	Interest Statement.....	158-159
" "E 2"	McDonald's Memo. of Crib-wharfing.....	158
" "1"	.....	162
" "3"	.....	162
" "4"	.....	162
" "5"	.....	162
" "6"	.....	163
" "7"	.....	163
" "8"	.....	163
Interrogatories, under Commission.....		63-65
" (cross) "	.....	65-72
Issue.....		4-11
Judgment of Judge Johnston.....		169-173
Letter "E" Boggs & Co. to Longworth.....		104
" "X" " to McDonald.....		105
Memo. of Crib-wharfing by McDonald—(E 2).....		158
" of Grant of work between Stations 247-259 (T).....		104
Minutes of Evidence.....		11-63
Notice of re-measuring work ("V").....		104
Notice to produce—"Y" and "Z" (not printed).		
Order disallowing claim.....		168
Order for Appeal.....		174
Order for Amendment.....		175
O'Dell's Abstract Measurements from Stations 162-380.....		135-136
" " of Quantities from "P P".....		137
" Measurement furnished by O'Dell to Mitchell (A 1).....		138
" " " " " (B 1).....		139
" " " " " (C 1).....		140-141
Particulars of Borrowing—162-380 (F 1).....		142
" of Spoil—162-380 (G 1).....		142
Specifications.....		117-128

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Insolvent Act of 1875, and Amending Acts.

in the County Court for the County of Halifax, District No. 1.

CANADA, PROVINCE OF NOVA SCOTIA, }
COUNTY OF HALIFAX, SS. }

In the matter of the Estate of JOHN R. MURRAY, an Insolvent

AND

ALEXANDER McDONALD, *Claimant*,

AND

JAMES G. FOSTER, Assignee of said Estate, *Contestant*.

I, James W. Johnstone, Judge of the County Court for District Number One, do hereby certify to the Supreme Court of Nova Scotia, *in banco*, that I have granted an Appeal herein from my decision given herein on the hearing of the Contestation of the Claimant's claim herein. 10

And that annexed hereto, marked "A," are the claim and issue in this cause.

And that annexed hereto, marked "B," are the minutes of evidence taken by me on the hearing of said Contestation.

And that annexed hereto, marked "C," are exhibits A, B, C, D, E, K, S, W, T, U, X, Y, Z, 1, 3, 4, 5, 6, 7, 8, BB, CC, HH, KK, LL, MM, NN, OO, PP, QQ, A1, B1, E1, F1, G1, H1, K1, R, M1, N1, A2 C2, D2, E2, DDD, ZZ, CCC, and EEE, admitted in evidence and marked by me respectively at the hearing of said Contestation.

And annexed hereto, marked "D," is the rule made by me in this cause on the hearing thereof and after argument, setting aside and disallowing the Claimant's claim. 20

And annexed hereto, marked "E," is my Judgment delivered herein.

And annexed hereto, marked "F," is the order granting the Appeal herein signed by me.

Dated at HALIFAX, the 22nd day of March, A.D., 1881.

J. W. JOHNSTON

Judge Co. Court.

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CLAIM "A."

1.	259,990 cubic yard of Earth Excavation, at 23 cents per yard..	\$ 59,797 70	
2.	9,830 cubic yds of rock, at 95c.....	9,338.50	
3.	28,339 " " crib-wharfing, at 85c.....	24,139.00	
4.	1,436 " " of masonry, at \$11.....	15,796.00	
5.	141 " " paving, &c., at \$11.....	1,551.00	
6.	1,930 " " ex. foundations, at 50c.....	905.00	
7.	Levelling foundations.....	50.00	
8.	Clearing 2½ acres, at \$20.....	50.00	
9.	Road diversions.....	1,988.00	10
10.	Catch water drains.....	953.50	
11.	Packing stones around culverts.....	300.00	
12.	Rip-raps 5,369 cub. yds., at \$1.50	8,053.80	
		<u>\$122,982.50</u>	

CR.

By balance on account with Thos. Boggs & Co., per money and goods supplied.....	\$ 11,081.34	
Balance on current account with Mitchell & Oakes from Murray, Grant & Co.....	2,987.20	20
		<u>94,068.54</u>
Balance due Claimant.....	\$ 28,913.96	
(Sgd.)	ALEX. McDONALD.	

INSOLVENT ACT OF 1875, AND AMENDMENTS THERETO.

*In the matter of*JOHN R. MURRAY, *Insolvent,*

AND

ALEXANDER McDONALD, *Claimant.*

I, Alexander McDonald, of Truro, in the County of Colchester, but at present of the City of Halifax, in the City and County of Halifax, and Province of Nova Scotia, being duly sworn in this matter, depose and say:

1. I am the Claimant.
2. The Insolvent is indebted to me in the sum of twenty-eight thousand, nine hundred and thirteen dollars and ninety-six cents, for work and labor done and ma-

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terials provided by me for the said Insolvent on section 19, Intercolonial Railway, at his request, as per account annexed hereto.

3. I hold no security for the claim.

I have signed ALEXR. McDONALD.

Sworn before me at Halifax, in the City and County of Halifax,
this seventeenth day of April, A.D., 1879.

P. H. LENOIR,
Com. Supreme Court, County of Halifax.

ISSUE: INSOLVENT ACT OF 1875, AND AMENDING ACTS,

In the matter of the Estate of

10

JOHN R. MURRAY, *an Insolvent,*

AND

ALEXANDER McDONALD, *Claimant,*

AND

JAMES G. FOSTER, *Assignee of said Estate, Contestant.*

Be it remembered that on the twenty-ninth day of August, A. D., 1879, the said James G. Foster, the above-named contestant, appeared and contested the claim of said Alexander McDonald, and on the first day of September, A. D., 1879, objections in writing to said claim with an affidavit verifying previous service of a copy of such objections on the said claimant were filed with said contestant, the assignee of said 20 Estate, which objections are in the words and figures following to wit:

1. Because said Insolvent is not, and never was indebted as alleged.
2. Because said Insolvent before he became insolvent satisfied and discharged said alleged claim by payment.
3. Because said claim is not in conformity with the requirements of said Act, and no vouchers were or are annexed thereto, and the absence of vouchers is not accounted for.
4. Because the Insolvent never requested the said claimant to do work or labor, or furnish materials for the said Insolvent, on Section 19 of the Intercolonial Railway.
5. Because said claimant never performed any work on said Section 19 of the 30 Intercolonial Railway, nor did he furnish any materials therefor.
6. Because said claimant, before the making or filing thereof by deed, assigned the said alleged claim to one Thomas G. McMullen, and said claimant in, and by such

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deed, lost and parted with all right to said claim, if any, and the benefit thereof, and he is not entitled to rank or file therefor against the said Insolvent estate.

7 Because said claimant, before the making or filing of said alleged claim, but after the same, if any, had accrued by deed assigned, said claim and said alleged debt to one Robert O'Mullen, which deed is in full force and effect, and said claimant has not the right to file or rank therefor.

8. Because the said claim, if any arose thus, and not otherwise, that is to say, the said Insolvents allowed their name to be used as contractors in a contract with the commissioners for the construction of a certain section to wit—Section 19 on the Intercolonial Railway. That after said contract was so taken, the said claimant entered into a contract for the performance of certain work thereon. That the persons 10 who, by the face of the said last named contract, appeared to be parties thereto, were, Thomas Boggs, the said Insolvent, John R. Murray who were then trading as co-partners, under the name of Thomas Boggs & Co., and Robert P. Mitchell and Stephen D. Oakes, then carrying on business under the name and style of Mitchell & Oakes, of the first part, and John C. MacKenzie, Alexander MacDonald and Frankfort Davis of the second part, and of whom said claimant was one, were then carrying on business, or were associated together under the firm name of McKenzie, McDonald & Co. That, in and by said last named contract, the said claimant, amongst other things, undertook, engaged and agreed to be bound by, and to conform to all and singular the terms, 20 stipulations and conditions of the first named contract; and the said assignee alleges and says, that amongst other stipulations and conditions, in said contract contained, or one of them, and by which said claimant was bound, and under which he was alone entitled to be paid for anything done, performed or furnished under said contract, was a stipulation or condition to the effect that payment therefor was only to be made upon the certificate of the Engineer for such division, or other, the Engineer in charge, upon said work, that said work was and has been performed and completed to the entire satisfaction of such engineer; and the claimant alleges and charges 30 that such work never was performed at all, or never was performed and done to the entire satisfaction of such engineer, and such engineer did not, nor did any engineer, having authority or power to do so, make or grant any certificate according to the requirements of such contract, or any certificate which would entitle said claimant to claim or be paid for said work or materials or any work done or materials furnished by the claimant on or for or in connection with said contract; and the said assignee further alleges and says: that the said contract under which said alleged work and materials were, if at all, furnished and done, was, after the date thereof and after said work had been begun thereunder, and before its completion by mutual agreement rescinded, terminated, abandoned and settled for, and said claimant thereupon and by an agreement in writing under seal, rescinded said contract and terminated the same 40 and abandoned all claim and benefit under said contract and to the performance thereof, and, thereby and by reason and means thereof released and discharged the said Thomas Boggs and John R. Murray, and each of them and the estate of John R. Murray of and from all liability and claim thereunder, and in respect thereof, agreed to accept and did accept said Mitchell and Oakes as his paymasters therefor, and which said named, deed or agreement is as follows, that is to say:—

Articles of agreement made and concluded this the first day of October, in the year of Our Lord One Thousand Eight Hundred and Seventy Three, between

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Mitchell and Oakes of Metapedia, in the Province of Quebec, Railway contractors, of the first part, and MacKenzie, MacDonald & Co., of Metapedia, aforesaid, Railway contractors, of the second part.

Whereas the said parties of the second part having contracted with the said parties of the first part to construct a portion of their contract and on section number 19 of the Intercolonial Railway, and whereas the said parties of the first part having become embarrassed in their business and unable to prosecute their work with sufficient energy, have and do hereby deliver unto the said parties of the first part all the plant, stock and material in said work, and the full control and management of same with power to take possession of and complete said work in every particular as specified in the contract hereinbefore referred to. They, the said parties of the second part, paying unto the said parties of the first part out of the monthly warrants for said work or otherwise a sum equal to the monthly expenditures for the completion of said work.

In witness whereof, the parties to this agreement have hereunto set their hands and seals.

(Sgd.) MITCHELL & OAKES, [L. s.]

McKENZIE, McDONALD & CO., [L. s.]

Per A. McD.

Signed, sealed and delivered in the presence of

(Sgd.) C. S. ARCHIBALD.

20

And the said assignee further alleges and avers that the said contract referred to in the agreement above set out was and is the contract under and by virtue of which said alleged claim is made. That the Mitchell & Oakes referred to in said agreement set out are the Robert P. Mitchell and Stephen D. Oakes who were parties to the contract mentioned in the first part of this objection, and the said claimant then represented and was the sole and only member of said firm of McKenzie, McDonald & Co., and he signed said Deed above set out as such; and the said assignee further alleges and says that the said claimant wholly failed to perform and fulfill the terms, stipulations and conditions of said agreement on his part to be performed and fulfilled, 30 and the performance of which would alone entitle him to claim for or be paid any sum of money whatever thereunder. And further, that the claimant accepted said substituted agreement in full satisfaction and discharge of said original contract and all liability thereunder, and said Assignee says that after the making and delivery of the said substituted deed or contract herein set out the said claimant thenceforth and thereafter dealt with said Mitchell & Oakes alone in respect to said work and said contract, and elected to look to them and not to look to said Thomas Boggs & Co., or to said John R. Murray, for any work done or materials furnished up to that time to be furnished and done thereafter in respect of said original or said substituted contract; and further, that said Mitchell & Oakes long before the filing of 40 said claim satisfied, paid and discharged all claims which said claimant had or could make under said contract, and each of them.

9. Because the said contract, referred to in the first part of the objection herein pleaded, was wholly rescinded so far as said John R. Murray was or is concerned, and

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all work and labor done and all materials furnish prior thereto were settled and paid for.

Because the said claimant and said Thomas G. McMullen to whom said claimant assigned said alleged claim long before the filing of said claim, commenced a suit in the Supreme Court in Equity at Truro, and which is still pending, undetermined against William W. Groom, the predecessor in the said office of assignee of him the said James G. Foster, said Mitchell & Oakes and others to enforce his alleged rights under said alleged contract, and to enforce payment of his said alleged claim, and the said assignee alleges and avers that the said claimant cannot file any claim against said estate, and ought not to be permitted to do so until said suit has been terminated and disposed of; and also because the said claimant was, and still is, indebted to the said Insolvent, and the said assignee in a sum larger than the claimants claim for goods sold and delivered by the said Insolvent, said Thomas Boggs & Co., and Mitchell & Oakes or one of them, to the said claimant, and at his request, and for money advanced and paid, laid out and expended by the said Insolvent and Thos. Boggs & Co. and Mitchell & Oakes, or one of them, to and for the said claimant, and at his request, and also upon an account stated between them or some of them, and for interest thereon. 10

The following are the particulars of the contestant's set-off to the claimant's claim :

To goods sold and delivered by the Insolvent and by Thomas Boggs & Co., to the claimant at his request, and money lent and advanced and paid, laid out and expended by the said Insolvent and Thomas Boggs & Co., to and for the claimant and at his request.....	20
To goods sold and delivered and money paid, &c., by Mitchell & Oakes	\$ 22,427 11
	\$ 98,300 00

That endorsed on said objections was a notice previously served on said claimant, notifying the said claimant that unless the claimant answered said objections within three days from the date of service upon him of a copy thereof, and of the said objections, the contestant would apply to the Judge of the Insolvent Court for the County of Halifax for an order disallowing said claim with costs. 30

And within the time specified, the said claimant, by Frederick A. Lawrence, his attorney, appeared and denied all the statements contained in the objections filed by the said assignee and joined issue thereon.

And as to the sixth objection, the claimant for an additional answer says that the said Alexander McDonald is the person beneficially interested in said claim and entitled to receive the same from the said estate, and the said Thomas G. McMullen is only a mere trustee to pay the same over to said Alexander McDonald.

And further, the claimant says to said objections that the said Thomas G. McMullen, after the said assignment and before the filing of said claim, re-assigned, released and conveyed the said claim to Alexander McDonald, and he was at the 40 time of filing his claim, and still is, entitled to receive the same.

And for an additional answer to the alleged objections, by way of set-off, the 220 said claimant says he never was indebted as alleged.

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And for a further answer thereto, the said claimant says that the alleged set-off was before the filing of said claim, satisfied and discharged by payment.

And on the first day of September, A.D., 1879, an order was granted by the Judge in Insolvency, on the affidavit of Wallace Graham, and the papers herein ordering that the said claimant have thirty days further time to file and serve his answers to the objections filed to his claim herein.

J. G. FOSTER.

Assignee and Contestant.

THE INSOLVENT ACT OF 1875.

10

CANADA,
PROVINCE OF NOVA SCOTIA, }
COUNTY OF HALIFAX, S.S }

In the County Court, for the County of Halifax, District Number one,

In the matter of JOHN R. MURRAY, an Insolvent.

AND

ALEXANDER McDONALD, *Claimant.*

AND

JAMES G. FOSTER, Assignee of said Insolvent,
Contestant.

And for an added objection, pleaded by leave of the Judge of this Honorable Court, 20 granted in this behalf, the said contestant by N. H. Meagher, his Attorney, says: that after the alleged claim of the claimant herein accrued, and before the said claim was filed herein, and before the said John R. Murray became insolvent, the said claimant, by deed, released the said claim, and all and every part thereof, and also released the said John R. Murray, therefrom.

And for a second added objection, pleaded by leave, as aforesaid, the said contestant says, that by an agreement, bearing date the fifth day of August, A. D. 1873, and made between the said claimant, Alexander McDonald and John C. McKenzie and Frankfort Davis, of the one part, and Robert P. Mitchell and Stephen D. Oakes, of the other part, the said claimant, and for and in consideration of a large sum of money paid by said Mitchell and Oakes, released and transferred to the said Mitchell and 30 Oakes all his right, title and interest in the said claim, and the contract referred to in the eighth objection herein before pleaded.

And for a third added objection: pleaded by leave as aforesaid, the said contestant says, that the claim of said claimant filed herein, was satisfied and discharged by Robert P. Mitchell and Stephen D. Oakes paying to the claimant at the request of the said John R. Murray, out of the proper moneys of the said Mitchell and Oakes, a sum of money which, by agreement between them, the said Mitchell and Oakes, the claimant, and the said John R. Murray, the said Mitchell and Oakes so paid and the claimant accepted and received in satisfaction and discharge of the claim of the said claimant.

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And for a fourth added objection pleaded by the like leave the said contestant says that by an agreement bearing date the fifth day of August, A. D., 1873, and made between the said claimant, Alexander McDonald, one John C. McKenzie and Frankford Davis of the one part, and Robert P. Mitchell and Stephen D. Oakes of the other part, the said claimant for and in consideration of the payment by the said Mitchell and Oakes of a certain debt due from the said claimant to one W. H. McKeil, and on further consideration of the assumption and performance by the said Mitchell and Oakes of the work remaining to be done on the contract hereinbefore referred to, and for divers other good and valuable considerations, the said claimant undertook and agreed not to make any claim or charge, nor to bring any action or suit of any kind, for the amount of his claim herein or in respect of the work done under the contract hereinbefore referred to. 10

And for a fifth added objection pleaded by like leave, the said contestant says that the said claimant entered into an agreement with one W. H. McKeil, for the performance of all the work on the contract hereinbefore referred to on section number nineteen of the Intercolonial Railway, beginning at station number three hundred and thirty-seven and extending westerly to the end of said section, and that after the said McKeil had performed part thereof and after the said claimant had become and was largely indebted to him therefor, he, the said claimant, made and entered into an agreement with the said Mitchell and Oakes hereinbefore mentioned, which agreement is in the words and figures following: This indenture, dated at Metapedia, in the Province of Quebec, this fifth day of August, in the year of our Lord one thousand eight hundred and seventy-three. Witnesseth, that we, John C. McKenzie, Alexander McDonald and Frankford Davis do release and deliver unto Messrs. Mitchell and Oakes of Metapedia, all our right, title and interest in that portion of our work on section number nineteen of the Intercolonial Railway, beginning at station number three hundred and thirty-seven and extending westerly to end of said section, this to comprist all the work on said portion of section number nineteen, excepting the building of masonry free from all actions of damage or charges that may be brought against said work, and commencing at the date when W. H. McKeil commenced work at said place, to wit, the twelfth day of November last. 20 30

Witness—C. S. ARCHIBALD.

McKENZIE, McDONALD & CO.,

ALEX. McDONALD.

And the said contestant alleges and avers that the consideration of and for the said last-mentioned agreement was that the said Mitchell and Oakes were to do and perform all and singular the work then remaining undone on Section number nineteen of the Intercolonial Railway, beginning at station number three hundred-and-thirty-seven, and extending westerly to the end of said section, and that they, the said Mitchell and Oakes, should pay the said McKeil the sum due to him by the said claimant, all of which they did, and the said contestant alleges and avers that the said Mitchell and Oakes duly performed and carried out the said agreement in all respects on their part to be done and performed, and the said contestant alleges and 40

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avers that the moneys so paid and work so done formed a large portion of the work done and in the original contracts, and for which the said claim is filed.

N. H. MEAGUIER,
Atty. for Contestant.

THE INSOLVENT ACT OF 1875 AND AMENDING ACTS.

CANADA,
PROVINCE OF NOVA SCOTIA,
COUNTY OF HALIFAX, S.S. }

In the County Court, District No. 1.

In the matter of JOHN R. MURRAY, *an Insolvent,*

AND

ALEXANDER McDONALD, *Claimant,*

AND

JAMES G. FOSTER, Assignee of said Insolvent,
Contestant.

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The claimant, by Frederick A. Lawrence, his attorney, in answer to the added objections added by leave, says that he denies the allegations in said objections contained, and each and every of them, and joins issue thereon.

And for a further answer, the said claimant says that the said release in each of said objections mentioned is the same release, and the claimant says it was not under seal and was made without any consideration.

And for a further answer, the said claimant says that the said Robert P. Mitchell and Stephen D. Oakes, by agreement between them and him, charged the said claimant with the costs and charges for the said work and material so done and furnished by them in respect to the said portion of said section 19, mentioned in said agreement and so done and furnished by them at the request of said claimant, and that the said claimant was and is entitled to be paid for the said work and materials by the said insolvent under his contract on the terms and at the rate therein mentioned, quite irrespective of said agreement with said Mitchell and said Oakes.

And for a fourth answer, the claimant says to said objections that said Alexander McDonald had a sub-contract with said McKiel to do said portion of said work, but at lower prices than said claimant was to receive for it under his contract, and it was agreed between said Mitchell and Oakes and said Alexander McDonald that the difference between the prices agreed to be paid to said W. H. McKiel upon his said sub-contract with said claimant, and thereby assigned to said Mitchell and Oakes and the amount that would be due to him for said work, labor and materials under claimant's contract with them and said insolvent for the performance of the whole contract should be allowed to said claimant, and that the said Alexander McDonald should be credited with the whole work done by said W. H. McKiel under said contract with the

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insolvent and said Mitchell and Oakes, and should be charged with the cost of it at the prices in said sub-contract with W. H. McKiel, and the said Alexander McDonald was charged with the said cost of performing the said work by said McKiel performed, and says he is entitled to be paid for the same under his said contract at the prices mentioned therein.

F. A. LAWRENCE,
Atty. for Claimant.

MINUTES.

IN RE MURRAY.

Contestation of claim—ALEXANDER McDONALD.

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MARCH 18TH.

GRAHAM contends that estate ought to commence, the question being whether the objections should prevail or be overruled.

I decide claimant to commence.

MR. HENRY asks for leave to amend claim on Alex. McDonald affidavit; do. F. A. Lawrence clause in contract Boggs and Murray and claimant referring to change in contract. (Read.)

RIGBY contra.

GRAHAM replies.

MARCH 19TH. 20

No. 4 is admitted; No. 5 admitted as to quantity, but not as to price; No. 6 is admitted; No. 7 is admitted; No. 8 is admitted; No. 9 is admitted. These items are admitted as to performance, but not as to liability. To be contested, Nos. 1, 2, 3, 10, 11, 12, and No. 5 as to price.

MR. GRAHAM tenders the agreement between J. Robert Murray and others, and McDonald and others, Feb'y., 1872. (Marked A, J. W. J.)

MR. GRAHAM tenders deposition of *Leonard G. Bell*. (Read.) Subject to the objection before Commissioners. (Marked B, J. W. J.)

Deposition taken under consent. Agreement.

Agreement A is received. (Read.)

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Plan certified by Deputy Minister of Railways under cap. 9, 1875, tendered and received, subject to objections. (Marked C.)

MR. RIGBY tendered a plan he alleged to be the original.

Plan C shows longitudinal plan of the entire contract number 19.

Certified plan of the cross sections from 162 to 380 inclusive, read. (Marked D. Subject to objections.)

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Plan by which crib-wharfing was to be done (prepared by Flemming) tendered.

Letter E admitted to be in handwriting of Murray, dated June 14, 1872.

MARCH 20TH.

MR. HENRY, on behalf of claimant, applies for leave to amend the claim. I am of opinion that I cannot do so at this stage of the proceedings, and that the application should have been to the assignee, but in view of the large amount at stake I think I shall do less injustice by allowing the amendment at the risk of the claimant than to shut it out altogether. I therefore made the order to amend, dated the 19th instant, leaving the contestants to take such action therein as they may be advised.

The amendments are :

- | | | |
|---|-------|----|
| 13. Levelling rock foundation for six culverts, at \$100 per culvert..... | \$600 | 10 |
| 14. Underdrains, 2700 lineal feet, at \$5.00 per 100 feet..... | 135 | |

\$735

ALEXANDER McDONALD.—I am the claimant and the Alexander McDonald mentioned in the contract. The contract was laid off into stations, 100 feet apart. The stations were distinguished by red stakes, and the numbers marked thereon by red keel. The western end of my contract commenced at the eastern end of McCready's contract, No. 18; the west end of my station was No. 380, and extended eastward to No. 162, this was part of section 19, Intercolonial Railway. There are five pieces of crib-wharfing that I built on sec. 19; two piece sseparate above McLean's Brook to the 20 westward. The piece to the westward, nearest sec. 18, is 348, and between 339 and 355 plus 50. The piece nearest the McLean Brook was from 329 to 334. The next piece is opposite the road diversion on the plan and on the ground, about from 304 to 316. The next piece was at Kain's Brook, between 259 and 270. The next piece was at Man's Hill. It was to be built from 247 to 250; it was built from 247 to 253. I measured the length of crib-wharfing. Crib-wharfing to protect the embankment from being washed away. The road ran along the Metapedia river.

MR. RIGBY objects to the receipt of this evidence, because the contract referred to a contract not now in evidence, and having put in the contract and the work having been done under the written contract does not come within this claim, which does not 30 set out or refer to the contract, or annex it as a voucher; having proved that Murray was a partner with Boggs, Mitchell & Oaks in the contract, the liabilities of the co-partners ought to have been valued.

I allow the parties to proceed subject to the objections to be considered hereafter.

Mr. Rigby also objects that the evidence is a variance, because the contract shews that there are co-contractors.

Examination resumed. I built the crib-wharfing according to this plan which I g from Mr. Bell in Ottawa; I gave to Mr. Mitchell; crib-wharfing is the laying of logs in the bottom of the river in towards the bank, and parallel to the river with a batter or slope 2 to 1, with the back plumb. The stone goes on the inside, and the outside 40 is used for ballasting the crib; above water mark smaller stones or gravel are used in the inside, heavy stones are used on the outside and top; the burm at the top is six feet, heavy loaded with coarse rock; the bottom sticks extending into the embank-

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ment is 25 feet in length; the logs are cedar; the top is about 8 feet in length, each gradually increasing in length to the bottom; the top log is required to be longer where it has to be shoved into the bank as shown on plan; the crib is composed of tiers of logs to the top, the perpendicular carried from 12 to 18 feet, as it extended to the river; the pieces of crib were constructed by me in the manner as above stated; the bottom tier of logs is level; the bottom of the river was sufficiently level except in places; in those three places not a hundred lineal feet of crib work; in one place we had to excavate to get the logs in the right length; in the other two places where the work was, the lower sticks not quite so long, the next tier would come into plumb, the timbers are fastened together by oak and juniper treenails; the logs are notched into one another. I did the crib work by a plan; Mr. Grant gave it to me; he was 10 the government engineer; Innes was inspector of crib-working; I gave the Grant plan to Mitchell since the work was done; I saw that plan as allowed at Ottawa at the trial, *Murray vs. The Queen*, Exchequer Court.

I gave evidence for the plaintiff at that trial; in giving my evidence I made reference to the Grant plan; I have not seen it since; plan K is an exact copy of the Grant plan. The plaintiff's attorney put the plan into my hand; I gave evidence respecting some of crib work.

The crib work above Mr. McLean's brook was about 1,600 feet long; the next piece was about 500 feet; the piece opposite the road diversion was between 1200 and 20 1300 feet.

The piece at Kain's brook was between 1000 and 1100 feet; the next piece, 247 to 282, is about 500 feet. I know the lengths by actual measurement, as well as knowing it by the stakes. The first piece above Mr. McLean's brook, by measurements on the ground, contained 11037 cubic yards; the second piece, 3060 cubic yards; the third piece, 10,000 cubic yards; the fourth piece, 10,300 cubic yards.

Paving is rock just on its edge in the bottoms of culverts, filled between with cement; its object is to keep the water from getting under the masonry; only one tier from a foot to 18 inches. The paving rocks I used were got from a quarry; the sides were flat; the rocks were packed close together, and the top was levelled with 30 cement; Portland cement was used. The paving was in nine of the structures, besides the culvert, there is paving one bridge; the bridge is one of the nine.

I did both classes of masonry 1 and 2 on my contract. The difference between paving and 2nd class, 2nd class masonry, is that paving costs more; paving costs more than some of my 2nd class masonry, excepting in the corners and the top stone no cement or lime is used in 2nd class masonry, and no stone dressing, except the top stone.

MARCH 22nd.

ALEXANDER McDONALD's examination continued.

The paving on my section was done, commencing at the west end of 19; 365 was the first place it was done in a box culvert; there was a beam culvert at 356, in which 40 there was paving. Fourteen structures, culverts and bridges were built by me on my contract, between 162 and 380. The masonry is in these fourteen structures; the

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masonry is on the sides of the culverts and on the tops of the box culverts. There is only one arch culvert, the masonry is on the sides and tops. In the bridges the masonry is on the sides, and some of the masonry was at Clarke's brook bridge. I constructed another bridge at "No Man's Gulch," in which there was masonry. The box culvert is two structures built up, covered over with large rocks. The beam culverts have no tops on them; heavy wooden beams are put across them to carry the rails. The arch culvert has the roof arched; it is a better class of work, the piers sustained the bridges, and the masonry is in the piers; of these structures two were second-class, the rest were first-class; the two second-class were box culverts; there is one structure I am not certain whether it is first or second class. The box 10 culverts are the broadest across the road; the beam culverts are longest lengthways of the road; Clarke's Brook bridge crosses the brook. There was pumping in connection with it; the pumping and rocks taken out of the work cost \$300. At Kain's Brook there had to be pumping, masonry and paving included in the structure; James Lowing was inspector of masonry on section 19 while I was performing the work; six of my culverts I had to step and level; I ought to have blown out, under the contract, the rock; instead of this I made steps and laid my masonry in it; this cost me more labor and expense, but saved the masonry; I had to cut it out with chisels and points; there was one of these culverts all rock; there would have been a hundred cubic yards of masonry; therefore I blew it out, and there was only fifteen 20 yards of masonry; had I not made the steps I would have blasted out and built masonry; I would as soon have done the blasting and masonry as the steps; I altered the work from blasting to steps by the direction of the engineer; Robert P. Mitchell was back and forward on the works while this work was going on; I valued the work on the six culverts, with stepping and blowing out the rock, at \$100 a culvert—\$600; it cost me twice as much; Mitchell knew that I was doing the stepping; Mr. Grant, the engineer, told me to step the culverts; Mitchell was satisfied with my way of doing the work. The reason I charged the same for second-class masonry as for paving, was, that paving cost me more than some of my second-class masonry, and I had the same price for first and second class masonry; \$11 low for first-class, high for 30 second-class masonry; \$11 high for paving, but I charged that price for it in consequence of first-class masonry being worth more than \$11. Rock excavations at about 170, 185, 210, 219, 236, 300, 360; the biggest rock cuttings were at 300 and 236; the next about 210; all the rock excavations made by me, except what was done by Archibald or Vosburg; the earth excavation done pretty much from one end of the section to the other; the principal, at the west end, was at Mr. Lean's brook, between stations 316 and 339; earth at cutting at Mr. Lean's brook was wasted, that is it was not put into the embankment, not being required; I commenced the cuttings at both ends; there is a small fill in the middle of the cutting; I hauled the cutting as far as directed by the engineer, some 1600 feet, and put it into the embankment; there was 40 about 25,000 yards in the centre left; this was waste; I filled up the fill with earth from this excavation on the east side; I did require to haul earth 16,000 feet, because the cutting from 300 met us; there was eleven stations between the two stations. The earth wasted at McLean's was so done with the approval of the engineer. There was waste at 300; don't know the amount. There was waste at Man's Hill. The cuttings were 22 at the bottom, and the embankment 18 feet across at the top; the slope in the cutting $1\frac{1}{2}$ to 1; the slope in rock where it was sound was 1 inch to a foot;

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where it was not sound, sloped it back further. From 247 to 289 a change was made in the alignment; this was along into the river, farther from the river into the bank. The change increased the earth-excitation. It was a hill of earth about 75 feet high where the change was made. I sluiced the earth into the river. The washing operation cost me as much as the crib-wharfing would have done if there had been no change of alignment; the washing was cheaper than excavating would have been. The centre of the river was changed about 12 feet into the bank. The slope was back 30 feet; some of it was more; it would average 30 feet. There was seventy thousand cubic yards in the embankment from the washing; some of the earth was wasted in making the embankment. Had there been no change of line, I would have had to make 17,000 yards of excavation; 5,000 yards in the line of cutting; 12,000 would have had to be borrowed to have made up the embankment. 10

Had the change not been made, there would have been 10,000 cubic yards of crib wharfing required. The change was done under Mr. Grant's supervision.

I made catch-water drains on the top of the slope to carry the water off and prevent it washing away the slopes. We drained into the culverts. The drains were from 162 to 245, and from 258 to 281, and from 281 to 380. On the upper side of the road, where we built the drains, principally earth, except some points of rocks. We had to excavate the rock to the depth of three feet in some places. We came in contact with rock in half a dozen places. Rough ground on the other side of the rail- 20 way from the river. The ground rose from the river in some places more than in others. The catch-water drains were measured by Mr. Odell.

Packing rock round Clark's Brook bridge was 200 yards, at \$1.50 per yard. We take out the excavation out of the foundation for one pier of masonry to about thirty feet square; the pier itself was 24 feet square. I filled up the 6 feet round the pier about 6 feet high. The second pier is the same. The excavation consisted of earth and rock. The rock was hauled by means of teams and stone-boats from the quarry; some of it 2 miles, some 1 mile. We filled in with big stones first, and then packed in the small ones to make it solid. It took about 200 yards of stone. \$1.50 was a small price. I charged the same for it as rip-rap; charged \$1.50 in the contract; 30 pavings worth twice as much.

MARCH 23rd

Witness stands aside in order to take the examination of Bernard Mahony and John R. McKenzie.

Further hearing adjourned by consent to Wednesday, 7th April, at 10½.

APRIL 7th.

Direct examination of ALEXANDER McDONALD resumed.

Built some rip rap on contract. It is to protect banks from washing by river. Rip-rap constructed of all rock. I built some at 375, Clarke's Brook, and about 295 and 240, and 233 and 225, and about 216 or 217 and 165; heaviest piece at about 240, 40 233 and 295. I constructed rip-rap by laying it off about nine feet at the bottom and building up to the height. Built according to the plan I hold in my hand, (marked S, J. W. J.) I built in '73 and '74, most of it in '74. I carried it on at two or three places simultaneously. None of the rock on the rock cuttings were wasted or put into the

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embankment by me. The whole of the crib-wharfing had been built, but not completed, before I commenced the rip rap. All the crib-wharfing had been commenced. I got the rock for the crib-wharfing out of the bed of the river and from the rock cuttings, and from the shores across the river. I scowed it across the river. I was ordered by the engineer to put the rock from the rock cutting into the crib-wharfing because the rock from the river would not suit, being too round and therefore had to be mixed. Mr. Grant was the engineer who ordered me. (Innes, the inspector, also forbade me.) I had finished the rock cuttings before I had formed the rip-rap—that using the rock from the rock cuttings. The balance of the rock from the rock cuttings went into the rip-rap. I had to borrow rock from the rock cuttings for both crib-wharfing and rip-rap. I scowed the rock for the rip-rap across the river. I mean by borrowing, when we got out of the line of the road for rock or earth. I borrowed some of the rip-rap out of the rock cutting. I had to go deeper, and bored into the rock cutting to borrow for the rip-rap. I mean going below the bed of the road and broader than was necessary for the cutting. I had to go deeper than the right level of the cutting. Twenty-two feet was the breadth of the cutting in the bottom, in both rock and earth, I had to excavate. The engineer gave us the grade in the cuttings. It was also marked in stones or pegs. When I borrowed for the rip-rap I excavated beyond the twenty-two feet, and deeper than the level. I filled up the excavations in the bottom with earth. I scowed the rock for the rip-rap from the opposite shore. I had to borrow from the cutting because Grant would not allow the round stones to go in. The rocks from the shores of the bed of the river were too round and therefore had to be mixed. The rip-rap would average half out of the cutting and half out of the river. I say this in reference to all the pieces of the rip-rap. I borrowed all the rock for the rip-rap at Clarke's brook, part from the quarry and part from the river. The quarry was one about a half and the other about a mile away. There was no rock cutting nearer than over a mile. There was a little point of rock handier than a mile, but I had to use that for other purposes, for the bottom of the embankment where it was soft, the point of rock was about 1½ stations from Clarke's brook. We hauled the rock in carts from the cuttings and dumped it over the bank; that we scowed, we wheeled in barrows on to the work; we put the heaviest stones outside, the smaller inside, this was done by hand. The outside was built some 1½ and 2 to 1. The average width of the rip-rap would be 7 feet, the width in the bottom would be 10 feet in some places, in others less; the rip-rap was built under Innes the inspector's direction and according to the plan. Grant knew of my having the plan of the rip-rap marked S; I got the plan from Thompson, McCready's engineer, before I had the contract on 18 for the rip-rap on that section. Grant told me that plan would do for the other sections; I signed the contract of 1st Feb, '72, at Metapedia. At the time I signed the contract, no work had been done between stations 247 to 259 and 341 to 355, plus 50; there was to be crib wharfing between those stations. I proposed to Mitchell, Oakes and Grant to do away with the crib-wharfing between those stations, by shifting the line into the bank; this would increase the excavation and render the crib-wharfing unnecessary. Grant and Oakes furnished me with a paper stating the quantity of crib-wharfing and the earth in the work as originally proposed. T. is the paper, it is in Grant's hand writing. I got the paper to shew me what was in the original before the additional clause was added. W., J. W. J. is the additional clause added to the contract changing the work. The

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clause W. was written after I got T.; it was written by Archibald, clerk to Mitchell and Oakes; it was added on by agreement between me, Mitchell, Oakes and Murray, and then the contract, with the addition added, was signed. Grant could not give me the information in T. until he made up the quantities from his plans. Oakes told Grant to make up the quantities and give me paper T. Grant gave the paper to Oakes and Oakes handed it to me in Grant's office; this was before I closed the contract of 1st Feb., and during the negotiations. After getting paper T, I decided to enter into the additional clause; I went on with the changed work at Man hill, between stations 247 and 259. I commenced sluicing at Man hill in April, '72; I could only sluice Spring and Fall; I worked in the Fall of '72 with the sluice at Man Hill; in the Spring of 10 '73 we found that the sluicing would not work, that the embankment was washing away with the river in the Spring; the river at this place was narrow and the current, consequently, strong. I had then to build about 500 feet of crib wharfing; Grant ordered the crib wharfing at this place. I commenced building crib wharfing in the summer of '73 and finished it in the summer of '74; Mitchell was along the line during the progress of the crib wharfing; he was there every week seeing that the work was done properly; Mitchell's house was on the N. B. end of the contract; the eastern end he attended to the work on my contract; I continued the sluicing until the spring of '74; I had to cart away the sluiced earth to make room for the crib-wharfing, so as to get it solid. The earth washed down from the slope went, part of it, into the river, part into 20 the embankment; the earth where the crib-wharfing was, hauled away in carts; I had twelve men and six horses engaged in hauling away, about six weeks. From end of crib-wharfing to 289 the road went into the bank about 12 feet; there was a cutting there into the bank; the road between the end of crib-wharfing to 289 was partly a cutting and partly a fill; the cutting was on the upper side of the road; the filling was on the lower side, handiest to the river; the fill extended the whole length, as also the cutting. In reference to 341 to 355 plus 50. no work done there before contract 1st February, '72. Heavy hill on the upper side of the road furthest from the river. A change was made at 276 after some of the embankment had been built by Archibald or 30 Vosburg; they had built an embankment from 270' to 278; the road was shifted out towards the river when I commenced; the change was made in consequence of a heavy hill; Grant ordered the change to save the cutting; saving the cutting no advantage to me. There was six feet of a bank to the hillside not used at all; I built on the contract of Archibald & Vosburg's embankment; my embankment was to the full width of the road, 13 feet; theirs was 6 feet of their embankment which was useless; I built to the level of the line; theirs was a foot lower on account of the shrinkage; part of the earth I put there was part out of the cutting and part borrowed; I used part of the embankment of Archibald & Vosburg in building mine; I hauled none of the 6 feet for use in my embankment; Mitchell directed O'Dell to measure the piece of work I did. (Paper 7 tendered, objected to by RIGBY. I receive it subject to RIGBY's objection.) Letter V. 40 handed me by Mitchell; the signature is in Oakes' handwriting. (It is tendered and received—and read.) I finished the work in October, 1874. Grant walked over the line with me and took the work off my hands; he expressed himself satisfied with the work as completed. The lower part of section 19 was not then finished. My work was done equal to that of the other part.

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APRIL 8th.

Examination of McDONALD resumed.—Letter V. was handed me in Truro; after I got the paper I came to Halifax; I saw John R. Murray in reference to paper; I told him I was going up to help Mitchell and O'Dell measure the work. Previous to that interview I knew that he was bringing an action against the government in relation to the work on section 19. Murray told me he hoped we would succeed in getting a correct measurement; from what I and Mitchell had informed him he thought Grant's measurements were wrong; I went up and helped to measure the work; I helped O'Dell and Mitchell. We commenced at the upper end of section 18, adjoining McCready at 380, and worked towards New Brunswick Mitchell pointed out the work to be measured to O'Dell. I remained with them till I finished the measurement of my contract and while they were measuring two-thirds of Mitchell's contract 10 across the Restigouche. Crib-wharfing and rip-rap not measured at that time. Mr. O'Dell had measured that work the fall before for me. When we came to the crib-wharfing and rip-rap, I wanted him to measure it over again. Mitchell said no, that he was satisfied with Mr. O'Dell's previous measurements made the fall before. I had the fall before employed O'Dell to measure my crib-wharfing and rip-rap. It was before the notice in letter V. was given. We measured the under-drains the same fall. I told Mitchell the result of O'Dell's measurement, and I also told Murray. In a litigation I had with Boggs & Murray I used an affidavit of O'Dell's stating the measurements. O'Dell and I explained to Mitchell the way we had measured the work the fall before. Mitchell and I disagreed about the measurement of the rip-rap and of a culvert in the 20 rock. I got O'Dell to measure the culvert, and I was to be allowed his measurement, as if built with masonry. Mitchell agreed to this. The culvert was in 335. This was one of the culverts spoken of previously, where, in place of excavating and building up with masonry, I cut the culverts out of the solid rock. Mitchell offered to allow one-half of what I charged for the rip-rap. We came to another piece of rip-rap, and he said he would have to see Oakes and Murray about it, as he was only one partner in it. O'Dell noted our conversation in reference to the piece of masonry and rip-rap in a book, by Mitchell's direction. He refused to allow me more than one-half of the rip-rap, because half was out of the cutting and half out of the river. We were to abide by O'Dell's measurements made on the ground; we agreed to this before 30 we went to measure the work. There would have been between 30 and 60 cubic yards of masonry in the culverts, according to O'Dell's measurements. Mitchell explained to O'Dell the terms of our contract in regard to the work at Man's Hill, between 247 and 259; Mitchell directed O'Dell to measure that piece of work for him. Previous to the contract of Feb. 1, 1872, Archibald & Vosburg had been at work. The amount of work done on this work by Archibald & Vosburg was 10,680 cubic yards earth excavation and 1,190 cubic yards of rock excavation. Alexander McDonald & Co. did work there too, previous to contract of Feb. 1, 1872. That firm was composed of John C. McKenzie, David Munro, John F. McDonald, A. P. Penny, and Alexander McDonald, myself. That firm commenced work in June, 1871. The 40 firm worked at a road diversion; 18 cents was the price of earth, and 75 for rock excavation, per cubic yard there.

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GRAHAM tenders notices to produce Y and Z. Notices admitted. Contract with Alexander McDonald & Co. asked for.

I had to rebuild a piece of crib wharfing that was carried away, and I had to rebuild ; carried by the freshet of '73 ; it was above Kane's brook ; it was carried away by the water lashing up and the ice carrying it away ; the whole structure was partly finished ; ice and water carried away the logs, about 700 feet in length and about three feet in depth.

The accounts, I presume, are in the hand-writing of Charles Archibald ; he was in the employ of Mitchell & Oaks as book-keeper. These accounts were rendered monthly to the firm of Alexander McDonald & Co. (Graham tenders accounts marked 1, 3, 10, 4, 5, 6, 7 and 8. J. W. J. Rigby objects. 1st, rendered by Mitchell & Oaks book-keeper and do not bind Murray ; 2nd, they were rendered to another firm whose claims are not being contested.)

APRIL 9TH.

I believe letter marked X to be in the hand-writing of John R. Murray, member of firm of Boggs & Murray ; Thomas Boggs and J. R. Murray comprised the firm. Thomas Boggs died March '73. The F vis mentioned in the letter, is the Davis who was partner with me in this contract of Feb. 1st, '72.

Letter X tendered and received under this contract. The name of the firm was McKenzie, McDonald & Co. Davis left the firm about 11th June, '73. Previous to 20 that date we had only been partially engaged on the works. John R. Murray bought him out, that is paid him \$400 to leave. I had to pay Murray the \$400.

GRAHAM asks for the production of J. R. Murray's books.

It is admitted that the following items appear in Murray's books :

("June 30, '73, note to F. Davis, \$400.") He had nothing to do with the contract after that. Davis is dead ; he died over a year ago. McKenzie left the firm about August, '72. John R. Murray paid McKenzie \$200 for him to clear out of the firm ; I paid the \$200 to McKenzie, and it is charged to me.

Item in Murray's book :

("August 31st, '72, cash J. C. McKenzie, \$200 ") He had no connection with the 30 work after that ; he went to Colorado ; I had no direct communication from him since he left. I received an account from Boggs & Murray with this item charged.

When I received the monthly account, 1, 3, 4, 5, 6, 7, 8, Penery and I measured the work to ascertain that the amounts contained accurate statements or credits of the work done. I found out that the measurements in the accounts were correct.

Q. Can you tell from reference to the accounts what work was done by Alexander McDonald & Co., from June 9th, '71, to Feb. 1st, '72 ? (Rigby objects. I allow the question.) I can tell the amount of work done each month. The 18 cents a yard in the accounts is for earth excavation on the road diversion, and 75 for rock excavation on the road diversion.

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The work shewn on the accounts represents the work done by Alexander McDonald & Co. during those months.

(Accounts 1, 3, 4, 5, 6, 7, 8, tendered and received, subject to Mr. Rigby's previous objections.)

In '72 the firm of Alexander McDonald & Co. settled up, and the firm of McKenzie, McDonald & Co. carried on the work. In settling up the affairs of the company I dealt with Oakes. I handed him over the old contract and got a new one from him. McKenzie and I wanted to get clear of Penery and John F. McDonald. McKenzie, Davis and I went into the new contract. Oakes bought the plant of Alexander McDonald & Co. and sold to McKenzie, McDonald & Co. The retiring members got their proportion 10 coming to them by Oakes becoming security for what they owed, and I reimbursing Oakes. The retiring members ceased to have an interest in the work on the first of February, 1872. John F. McDonald I understand is dead.

Between 341 and 355, plus 50, the road was not shifted in as we spoke about. I mean by we, the firm of McKenzie, McDonald & Co., and Mitchell, Oakes, Murray and Grant, the engineer. The change talked of was shifting the road in so as to dispense with the crib-wharfing. The line was changed at 341 towards the river; at 355 it was put in towards the hill. The line was changed to make the excavations less at 357. Lessening the cutting was no advantage to me, and this change was not made at my desire (Objected.) The charge was not made for the change. The crib-wharfing was built 20 there. The sluicing was a failure, and, therefore, the road was not shifted in as spoken of. It would have been cheaper to build the crib-wharfing than to do the sluicing. If the sluicing had not been a failure it would have been cheaper to have sluiced round Clarke's Brook. There was three feet of packing stone round the bridge, I was mistaken in stating it to be six feet previously. The borrowing was chiefly at the lower end of the contract, from 162 to 281. The embankments were chiefly made by borrowing from 281 to 380. The cuttings were the heaviest at those stations, and between them we had a waste.

Cross-examined—My first contract was made June, 1871. It was not my first railway contract. I had had two before—one on the St. Andrew's railway, the other 30 was on the Intercolonial. The contract on St. Andrew's was. I calculated the measurement when I was time-keeper at Elmsdale. The plan of cross section will shew the earth and rock wasted, and the work as completed. The plan of the cross sections, plan D, was made after the work was done. I have seen plan of cross sections with Grant while I was working. If the embankment exceeds the excavation we have to borrow, and where the cuttings exceeds the fill, after 1600 feet we have to waste. The limits of our haul was 1600 feet. In cases where the cutting would fill all the embankments within 1600 we wasted the balance, and I claim to charge for what I wasted. I borrowed where I could not get the earth within 1600 feet, and I claim to be paid for the borrowing. I was directed to do this by Grant. I would have hauled 1700 feet 40 if ordered. I don't know how much further I would have hauled than 100 feet beyond the 1600 feet. The cross sections will only shew the cuttings and fillings by calculating the contents of the cuttings and fillings. I don't recollect signing any plans at the time I signed the contract. After the first contract was signed the profile plan marked

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E. J. W. J., was got from Gilliard, the assistant engineer. It was got within two months of the signing. There are no other general plans than the profile cross sections and the detailed plans of the crib-wharfing, rip-rap, etc., etc. I know of no other plans than these coming under the denomination of engineer plan. On plan C there is no crib-wharfing marked except between 341 and 355. The cross plan section shews the crib-wharfing along the line but not what ought to be there between 247 to 259. There is no plan produced as yet shewing the quantity of crib-wharfing intended to be done at time contract signed. Before I signed any contract I understood where the crib-wharfing was to be done. Grant pointed out the crib-wharfings to me on his plan, and told me the stations in his office in May or June, 1871; he shewed me the same 10 thing several times afterwards. McKenzie was present when Grant first shewed me on his plans; no one else, that I recollect. He pointed it out again to me in his office before I signed the second contract; can't say how long before. The upper piece of crib-wharfing was done by McKiel under a sub-contract from me. There was a contract between McKiel and me, in writing, to do some work on the road. Paper writing B B is signed by me. I signed C C in blank; there was no writing on it. I gave orders to have a deed written; signed it before it was written out; received it afterwards; was not satisfied with it, but let it go. Archibald was present when I signed. Mitchell went in with me; I do not know whether or not he was present at the signing. Some of the crib-wharfing was done with the sections mentioned in B B; done by 20 McKiel. The piece done by McKiel under his contract was between 339 and 355, plus 50. He did not do all the work under my contract except the masonry between 337 and 380.

APRIL 10th.—Before B B was signed McKiel did \$2,000 worth of work under my contract. I did some work between 337 and 380 before McKiel took hold under his contract. Can't say how much, but I built a dam and sluice and did some excavation. The excavation was on the line of the road between 337 and 380. The excavation between these stations was done by the first firm of Alexander McDonald & Co; the sluice and dam was built outside of line of road by McKenzie, McDonald & Co. for the purpose of sluicing. I charge in my claim for the whole done, including that done by McKiel. I have made no special charge for the sluicing and damming. There was 30 rip-rap done at Clark's Brook, which is near 380. McKiel did no rip-rap. I built the crib-wharfing rendered necessary by the failure of the sluicing. There was a little point of rock (161) on McKiel's work. I used some of the rock washed down by the sluicing. I claim to be paid for what ought to go into the filling. What was outside of the 1,600 feet of a haul I do not claim for; I claim for it as borrowed. I claim that I am obliged to use all the earth from excavation for the filling within 1,600 feet outside of that limit. I ran outside the line of road for such filling, and charge for the earth so borrowed, and that I can waste the earth in the cuttings not required for filling within the 1,600 feet, and that I can charge for the earth so wasted. There is a cutting between 334 and 339; part of that cutting was washed out by sluicing, 40 and part by excavating. I sluiced the most of it. The cutting between 320 and 330 was all sluiced except what I put into the embankment. I borrowed nothing from 305 to 316 for that embankment. I did not use the rock from the cutting at 300. I filled in 1,600 feet towards 18. I sluiced some, but did not charge for what I sluiced there, because I was only entitled to charge for the cuttings within

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1,600 feet ; I charged for what was over and above the 1,600 feet of a haul, but left it to O'Dell to calculate. I did not make any calculations of work myself, but gave the statement to O'Dell to calculate from. O'Dell was never, to my knowledge, on the road until he went with me to measure the crib wharfing. Grant sometimes was not on the work more than once a month. I never had a statement of measurement from Grant or Gilliard. I got a paper containing Grant's measurements from Mitchell, Oaks & Murray. I never went over the road with Grant when he made the final measurements; he never made monthly measurements. I do not refer to the two months Grant was away, but outside of that; O'Dell, one man and myself made the measurements of the crib-wharfing and rip-rap; it was after the work was taken off my hands. O'Dell did not open the crib-wharfing; he took all the dimensions, except the barter. O'Dell could tell the width of the crib-wharfing at the base of it, by measuring from the toe of the crib-wharfing to the toe of the embankment; he could not do this unless he knew the crib-wharfing at the back was perpendicular; he could not tell the measurement of the rip-rap, except from the plan showing the work was done according to plan; he could not tell the breadth at the bottom, except from the plan and knowing that the work was done according to plan. Mitchell and I agreed before we went to the ground to be bound by O'Dell's measurements; I only claim for the earth excavation, as measured by O'Dell. I made the calculation of the four pieces of crib wharfing myself; I had a man to help me. The first column in my memorandum book, marked D.D., is the length of the crib wharfing; the next, the average height of the whole; the third, the average width; and the last column is the cubic contents of the crib wharfing. There ought to be an "O" added to the figures in each line. Mitchell paid Innes for me \$200. The inspector, Laurie, told me to fill in the paving with cement. The arch culvert I built at Kane's Brook was about station 259 or 258; it was built by gathering the sides in as they went up and putting a large stone on top. Pumping is not unusual in making culverts. The contractors told me there was no pumping at Clarke's; Oaks told me he was the only one present; Davis was there also; it was understood there was no pumping to speak of in the culvert.

Pumping had to be done at Clark's and Kane's brooks. A rock large enough to be blown up, I charged for as rock excavations; rock larger than 3 cubic feet we call rock excavations; if we could pick or break it with a hammer, we could not call it rock excavations; the rock excavations refer to rock excavations in culverts; stepping in foundations charged for as rock excavations. I had level to one stone of Clarke's Brook. I charged for this as rock excavations. Both the engineers and inspector told me to do the stepping and levelling. The culvert at 235, Man's Brook, was all rock, except a few stones of masonry at the lower end; between 10 and 15 yards. I cannot say, from my own knowledge, what was the actual amount of masonry done at Man's Brook; I cannot estimate it. The above estimate of the engineer is true, according to my judgment. I was to be paid for cutting the rock as if it had been masonry. I also was to be paid for the excavation. I would rather have excavated all out, and built masonry; it would have been cheaper. I suggested the cutting at Man's Brook. It cost me more to cut rock and level than to build masonry. I always have to level when I make rock excavations. I cannot now tell the rock I would have had to excavate had I done all masonry. Grant consented, as also Mitchell, that I should do the work as above at Man's Brook. O'Dell measured

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the work. The rock excavation at 300 was done by Mr. Kiel. The earth I wasted between 316 and 339 I wasted between ten sections. As I got into the cuttings, in calculating the 1,600 feet I calculated the cutting already made, as well as the embankment. I put the waste over the bank into the river. I made the calculations from O'Dell's measurements. Our totals agreed. I cannot tell whether O'Dell got his figures from measuring the embankments across sections. All my measurements, as far as rock and earth is concerned, are made up from O'Dell's measurements. I depend on O'Dell for the contents of the rip-rap. My statement as to the quantities that would have been between 247 and 259 are taken from the pencil memo. marked T. Grant was present when Oakes gave me T; it was before contract 10 was signed. I applied at the same time to have a change made between 341 and 345, plus 50. All changes made at the same time when we were entering into the contract. I stated that the change I wished to have between 341 and 345 was to shove the road into the bank far enough to do away with crib-wharfing; it was similar to that I wished to make between 247 and 259. In my original claim I did not charge for the crib-wharfing between 247 and 259; it is in my amended claim. I do not know how far road would have to be taken into the bank to avoid crib-wharfing; some 12 feet, the engineer told me. I did not take the road in between 341 and 345 at one end more than 12 feet. The position of the road between these sections was nowhere altered 12 feet into the bank. T does not show how far the road was 20 to go in. The packing round the foundations at Clarke's Brook was not masonry. Mitchell helped me do the packing round the culverts. We both hired men; Mitchell paid them. This work was done before I signed the agreement marked O. Agreement O was signed in March, 1874, in blank. I never saw the agreement till I asked for my account in Halifax; it was filled up not in accordance with the instructions I had left in some particulars. I did not see it until after the work was done at 300. I made the rock-cuttings wider and deeper than the road. The whole of the rock-cuttings, at 300 was done by me. I do not claim for the quantity of excavation necessary to make road at 300 wider and deeper. I had to borrow rock for the rip-rap at 300. I charge for the rock in the rip-rap; it was used at 290. All the rock 30 was used within 2,000 feet from where I borrowed it. I finished the crib-wharfing before I finished the rip-rap. I took rock out of that cutting for crib-wharfing. I hauled the rock for the crib-wharfing at 310 out of that rock-cutting, and at 330. I carried on the crib-wharfing and rip-rap simultaneously. I will not stop at that cutting and get rock for the crib-wharfing. He (Grant) told me also to put the rock at 330. All the work contracted under first contract was settled for before the second contract was entered into. We settled according to Grant's measurements. Mitchell and Oakes were to settle with McKiel, and to pay me \$1,000. I got money from T. Boggs & Co. and Mitchell and Oakes on account of the contract. 40 I used to receive accounts from May perhaps every three months; they were not altogether correct. I complained of the charge of interest; I complained to Murray of this charge. I also complained of the credit I was getting for my work. I also complained of goods supplied to Alexander McDonald & Co., under first contract, for \$600, as Oakes was to pay it. I have talked to Donald Sutherland about claim in presence of Oakes. I asked and got a profile and bill of works. Oakes gave me the profile; he produced no account. He asked me if his account rendered against him

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was correct. I did not say it was all right except the tools. Oakes might have brought me a bill afterwards. I did not, on looking at bill, say it was all correct except tools, and that I owed Oakes and partners \$11,000. I can't say whether I referred to Mitchell's claim for superintending, saying that I might dispute it, but would not. I do not recollect having a conversation with Mitchell and Sutherland at the same place. I do not recollect telling him that the judgment I gave was for security for supplies, and that Murray had agreed to carry me right through. I don't recollect saying to Oakes that "a bill of some kind had to be made to you fellows." Never said to Donald Sutherland that I would like to settle, and that I thought I might settle with Mitchell for a trifle, but would make no offer to Oakes. I never 10 told Charles Graham that I did not expect to get anything, but had to make out a bill to save my property in Truro from the Boggs' estate, and by filing a bill against the estate, I would do better.

Re-examination. The boulders I spoke of excavating by blasting were only at the bridge at Clarke's Brook, underneath one of the piers.

In cutting with a chisel I made the wall slanting, and blew and chiselled sufficient to let the water run into the rock; I chiselled the top to the bed of the river; I cut coping on the rock; I cut drains on the upper side of the culvert. I never charged anything for earth wasted, except beyond 1,600 feet; I would not charge within that limit even if I wasted. I don't charge for borrowing where there is 20 a cutting from which I could get the earth within 1,600 feet. The big cutting above McLean's brook was done in 1874, between 334 and 339; that was a filling at 330; the fill was from 330 to 334, and a cutting as well.

APRIL 13th.

Some months Grant made measurements, and some months he did not; he very seldom made measurements; he would look at the stakes, see the number on it, and whereabouts I was working, and the same in the pits. The last two years the assistant, Gilliard, did this; Grant made very few measurements on the grounds for the last two years. In my first claim I charged for the work actually performed and the crib-wharfing, as I got the measurement from O'Dell; that includes the excava- 30 tions between 247 and 259, and does not include the crib-wharfing as projected between these two stations, nor the crib-wharfing that was built; the rip-rap was built in '73 and '74. I could tell that the road was not thrown in 12 feet from 334 to 345, and to 355 plus 50, by comparing the two set of stakes put down by the engineers. Some of the six culverts, the blowing and stepping, are worth more than \$100; and some is some less; taking the average of the six, they are \$600; the one at Man's hill was the heaviest; it is worth \$400; I charged that for it. (Objected.)

WILLIAM DELANEY. I live at Restigouche, Quebec, northern side of river; am a farmer and lumberman; know McDonald, Mitchell and Oakes; I worked for McDonald on section 19; employed in building and ballasting crib-wharfing; drove some lumber; 40 some of the rock I got from the cutting and some from the river. I was foreman of the ballasting party. I worked at 4 pieces, one was at Man Hill, another above Kane's gulsh, another above McLean's brook, another below Clarke's brook. Crib-wharf built of cedar; logs laid up and down the river with cross-ties fastened with

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juniper treenails. The average length of the two bottom tiers, twenty-two feet; the logs would be from twenty to twenty-four feet; in some cases the bank would have to be cut away for the back stringers. Height of crib-wharfing at back, between 10 to 12; I never measured it; but stood in crib wharfing, looked up and judged it; back of the crib-wharfing plumb the front with a slope 2 to 1. The foreman was my guide in building, and Innis superintended the work. The foreman had a plan to work by; I had seen it in McDonald's hand. Innis superintended the ballasting; he told us he would not allow us to use stones from the river wholly; but required us to mix them with stone from the quarry, half and half; he said he wanted split rock; outside of crib-wharfing was hand packed; the inside was packed snugly, and the top 10 and back filled with smaller stones. We built by the engineer's stakes, which were marked and had cross heads. Mitchell was there occasionally while we were working; he saw the materials used; he was there, too, when we were ballasting; I do not see how he could help seeing the materials used; he must have seen us getting rock from the cuttings; and knew what we were doing with it. I worked at rip-rap; I scowed the stone for rip-rap $\frac{1}{4}$ mile or more. We had to take stone out of the cutting for the rip-rap for the same reason, as above, for crib-wharfing. The rip-rap was hand-packed in the front, and joints broken as much as possible. The hand-packing did not extend to the back; but the stones were carefully laid in. The breadth of the rip-rap at the bottom would be about 8 feet. We had to level the bed of the 20 river in some places.

Cross-examined.—Mitchell lived at Metapedia, 3 or 4 miles from where we were working. He was there sometimes every day, sometimes every two days. I saw Mitchell there oftener than Grant. He came about once a week, sometimes oftener. Grant or Gilliard never directed me as to the work. I had nothing to do with the way the work was done. I was foreman of rip-rap. I never built crib-wharfing before. The back of the rip-rap was filled with stones carefully. The crib-wharfing was packed in to a distance of 3 or 4 feet. The stone from the river was round hard stone. The crib-wharfing, as to the thickness through, was built under Grant's and Gilliard's direction. I was driving a team part of the time. I hauled stone from the 30 cuttings at Man's Brook. When I left there was a good deal of stone left in the cutting. One piece was finished and three partly when I left. The piece above Man's Brook was ballasted when I left. As far as I recollect, two pieces of crib-wharfing were finished when I left.

GORDON COOK.—I live in Truro. Am a stonecutter and mason for 11 years. Was working for McDonald on sect. 19. Worked part of three summers. Remember culvert at Man's Hill. The rock on the upper end of the culvert was above the grade. The breadth the culvert was to be was marked on the rock. It would be about 8 ft. Quarry men were put in to blow out the rocks. Light shots were used to save sides from being shaken. We had to put in three or four shots when one would do in 40 ordinary cases. After the blasting we had to take out 4 to 6 inches off the sides with a chisel. Culvert about four feet deep below the grade. It might be deeper. There was masonry on the lower end. The solid rock was stepped to receive the masonry. The bottom was smothered off to carry the water. The sides were good, ordinary double sides formed with chisel. Two pieces of coping at the upper end were cut in the solid rock between the coping; one side a

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stone was stepped in, the other levelled with the solid rock. The culvert done in this way would cost about the same as if blasted out and done rock-masonry. Man's brook culvert was a beam-culvert; three culverts were stepped and were box-culverts. I think they would cost \$50 a-piece. There was another beam-culvert. I only worked on five culverts. The paving was put in with square-hammered stone and Portland cement groited, that is mixing Portland cement and sand with water and pouring it in. I was at the works last week, John Murray with me. Masonry in culverts first and second-class; dry work is second-class, and the first is work embedded in mortar. Paving would be as good, if not better than second-class masonry. There would be between 30 and 40 yards of masonry in the stone culvert, Man's Hill, had it been done 10 by masonry.

Cross-examined.—I have worked at rock blasting; 5 or 6 men were at the blasting, some 3 weeks; they were getting \$1.25 or \$1.40 a day; it would not have taken any longer to blast the whole out; not much powder, and it would have cost about the same to do the work one way as the other. Two men were 6 or 7 days chiselling, they got \$2.50 a day. There were about 10 yards of actual masonry; the masonry was one-third of the culvert. I cannot exactly tell the quantity of rock that was blasted out. I never did any paving by the yard; the paving ought to be worth \$8 a yard or more in that country. The stones in the paving were bedded in cement and 20 then groited. It would take 1 bbl. of cement to do $2\frac{1}{2}$ yards of paving as that was done. The wages of a man at paving would be \$2.50 a day; cement worth \$7 a bbl.; stones for $2\frac{1}{2}$ yds. would cost \$3. I was cutting stones in the quarry; we saved in quarrying stone fit for paving. There is no Quebec cement in the five culverts. I worked at one box-culvert, was south of Man's brook, and two above it. Three men were working at the stepping; that work required experienced men. I can't say whether it would have been cheaper to have blasted rock out or to have stepped in these three culverts. One man would do $2\frac{1}{2}$ yards of paving in a day; I meant above that it would cost \$3 a yard to quarry stone and haul it. A square yard could not be quarried by one man, out of that quarry in a day. Ten men would get out 7 or 8 30 cubic yards in a day; a cubic yard of stone will make over 2 yards of paving. The stone had to be hauled about six miles from the quarry.

JOHN W. MURRAY.—Live in Truro; I worked on sect. 19; I am a mason for fourteen years; I was foreman of masonry on Restigouche Bridge for 9 months; Alexander McDonald was working three miles from the bridge was at McDonald's works a week ago in company with Cook. I saw the culvert at Man's Hill cut out of the rock. I examined it. The formation of the culvert was taken out of the rock. The up stream end, the longitudinal timber, is on the rock. At the down stream end there is two courses of masonry under one end of stringer, and one course under the other end. The sides were cut out of the rock. The culverts would be five feet deep. 40 The coping at the other end was cut out of the rock. Had the whole rock been masonry there would have been about 40 yards. The cutting out as it was done would cost as much as if the work had been masonry. I saw step culverts on the work. Stepping is a notch in the rock for the stone to set in. I saw paving in bottom of culverts. Paving is stone from 6 to 12 in. thick, set on edge, cemented and groited; depth from 12 to 15 in. Groiting is one bushel of cement and two bushel of sand, mixed and poured in the seams. Paving would cost as much as second-class

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masonry. I saw second-class masonry on McDonald's work in a dry culvert. I compared the paving with McDonald's second-class masonry.

Cross-examined.—I was working on the Restigouche bridge when some of McDonald's work was done. All I know is that there was groit put on the stone. I cannot tell the thickness of the stone used. The nearest quarry with stone suitable for paving would be two miles; the farthest five miles. Second-class masonry up there would be \$8.50 a square yard. I would do 2½ or 3 yards of masonry a day. Stone for a cubic yard would cost \$5.00 or \$5.50. Stone for a cubic yard of paving ready to go in would be \$4.00 or \$4.50. If paving was a foot thick it would make three yards of paving. A barrel of cement would make three yards of paving. I got \$3.00 a day and found. Men could not be got up there for \$2.50 a day to do three yards in a day. I would not work up more than one cubic yard of stone a day. I made no calculation to determine how much it would have taken to quarry the rock in the culvert and build up masonry. I could not see the marks of the drill in the sides of the culvert. I remember seeing one drill mark. How it was made I do not know. It was principally cut out. The drill mark might have been for plugs and feathers. It might have occurred in cutting out the sides. 10

Mr. HENRY offers, and they are received, a certified agreement between Boggs & Murray and the Queen's Commissioners of Railroad, 2nd August, 1871; marked H H. Also original contract between Tuck, and the Commissioners of Railway, dated 15th 20 June, '70; K K. Bond from Boggs and others to the Queen, 2nd August, '71; marked L.L., J. W. J.

RIGBY objects to Bond because not referred to in any of the contracts.

Bond received, subject to objections.

General specification M M is received, Mr. RIGBY objecting that it is not annexed to the original contract.

Mr. HENRY offers *bill of works*.

RIGBY objects to reception because not incorporated with or referred to in the contract, and because not material to issue and inconsistent with written contract. I think it safer to receive bill of works subject to objection. 30

Bill of works received, marked N N.

Mr. HENRY offers *certified plan of crib-wharfing*.

RIGBY objects: 1. Certificate not correct, according to the account.

Plan withdrawn for the present.

HENRY tenders certified plan of original cross-sections between 247 to 259, plus 25; and from 340 to 355, plus 67.

RIGBY objects to its reception: 1. Because a plan of cross-sections is already inconsistent with the plan now tendered.

Plan received subject to objections, and marked O O, J. W. J.

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JAMES O'DELL.—Live in Truro; am civil engineer. For 25 or 26 years have had experience in railroad building in Ontario, New Brunswick, and Nova Scotia. I measured work on section 19 in October, 1875; again May, 1876. I measured in October, 1875, for McDonald, Alexander; I measured crib-wharfing and rip-rap between 162 and 380. In May, 1876, I measured earth-work for Mitchell and the remainder of crib-wharfing and rip-rap on the remainder of the section. I mean by earth work, all the excavation on the whole of section 19. I have the results of my measurements in tabular form. The paper P.P. is an abstract of the measurement between 162 and 380. It is taken from the same data as the statement rendered Mitchell and Oakes. Paper P.P. is a correct statement of my measurements of 10 actual work, except as between 247 and 259. Paper Q.Q. is an abstract from P.P., shewing in addition where there was material wasted or spoiled and borrowed. Since I made the measurements of actual work I have spoken of, I calculated from the original cross sections between 249 and 259, the contents of them as projected by these cross sections; the quantities so calculated are contained in the detailed statement P.P. I got the data for these calculations from the cross sections exhibited to me in the engineer's office, Ottawa, as the original cross sections. I went to the office in company of Mitchell, at his request; Mitchell requested Bill, an engineer in charge of office, to shew me the original cross sections between 247 and 259; Bill handed them 20 to me; Mitchell said they were what he wanted, and requested me to make a copy of them; I traced them on tracing-paper, and from them I made the calculations. Mitchell stated as his reason for wanting these copies, that there had been an alteration in the line, and that by McDonald's contract he was to be paid according to the quantities contained in the original sections, and he wanted them for the purpose of making out McDonald's estimate. The only item in P.P., referring to the stations between 247 and 259, is the estimate of the excavation and embankment; I made an estimate of the crib-wharfing between 247 and 259, from the cross sections I have spoken, and not from actual measurement on the ground; it is an imaginary quantity, because the work was not actually done. Mitchell said that 30 under McDonald's contract he was to be paid for the crib-wharfing between 247 and 259, which had been provided for by the original cross sections in lieu of the extra earth work that he was required to do by the alteration in the line. I compared my copy of cross sections, made at Ottawa, with the cross sections on plan O.O. in evidence and found them to agree. I measured for Mitchell in the autumn of 1875 a piece of crib-wharfing, between 247 and 259, that had been actually done; this was when I was measuring for McDonald; McDonald said that that work was not to be included in my estimate for him, the measurement was 3,428 cubic yards. The actual excavation I measured on the ground between 247 and 259, was 87,894 cubic yards. Between those stations I have returned 8,302 of excavations and 14,846 of embankment; this is the net quantities, without any percentages. Adding 12½ per cent. to 40 the 14,846 embankment, will make 15,701, and is the embankment McDonald had to provide to make up the quantity of excavation McDonald is entitled to. We exclude the 8,302 and take 15,701. It is always usual to add a percentage, because the fresh earth when taken out of the embankment always shrinks and subsides. Ditches, inlets, outlets, &c., &c., in Q.Q. are added to the excavation, because they are excavations although made outside of the road bed, and are generally classed as miscellaneous; they are actual excavations, and so are classed as such in contracts of this kind. The whole amount of excavation to be credited to McDonald between 162 and 337, is

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146,359 cubic yards; that is just line excavation; the miscellaneous work is included in the above; from 337 to 380, 40,348 cubic yards. The 146,359 is made up from the original cross sections as regards 247 to 259, inclusive. There is no cutting from which McDonald could get earth for the filling between 247 and 259 that is not within any reasonable distance. When I made the measurements on section 19, in May, '76, Mitchell and McDonald were both present; I was measuring at Mitchell's request; I did not present on that occasion all the crib-wharfing and rip-rap, because Mitchell told me he was so satisfied with my measurements of the previous year that there was no necessity for measuring them. Mitchell said he thought it advisable to have the whole work measured, because my 10 previous measurements had exceeded the measurements of Grant, the government engineer. Mitchell and McDonald were discussing matters along the line, to which I paid no particular attention, unless my attention was particularly called to anything. One or either, or both of them, asked me to make a note that the rip-rap between No Man's gulch and station 289 was to be returned, one-half for McDonald and the other half for Mitchell. The next question between them was from 295 to 297; McDonald claimed the rip-rap between these stations; Mitchell said he would have to refer it to his partners. Between stations 225 and 228 I was requested to make a note that the rock for that rip-rap was taken from the cuttings; from 232 to 235 I was requested to note that the rock for that rip-rap was taken from the river at station 225. 20 There was rock excavation for a culvert; Mitchell agreed to pay for the excavation; as masonry it amounted to 34 yards. These notes were agreements made between the parties. Measurements of the culvert, 34 yards, made under above agreement. I entered those agreements by request at the time in my field-book, from which I now read them. Mitchell pointed out the earth work I was to measure to me; I gave Mitchell all the details of those measurements; McDonald was there, at Mitchell's request, and Mitchell pointed out to me the work done by McDonald, and he also pointed out to me when I came to the termination of McDonald's work on the section; I understood that I was measuring the work for a settlement between Mitchell and McDonald. I saw Mitchell after I had given him the statements; he said he had 30 lost them, and asked me to give him another copy; he said he was going to pay McDonald on my measurements; I furnished him with another copy last July; last January he told me again of his intention to pay McDonald on my measurement. I was a witness at the trial at Ottawa; the Queen vs. Murray; I was a witness for Murray; I remember a plan used at trial, as a detailed plan of crib-wharfing. The crib-wharfing I returned; between 339, plus 50, and 355, plus 50, were made from actual measurements on the ground.

The crib-wharfing which I have returned in my statement, put in marked P.P. and Q.Q., were all calculated from actual measurement on the ground. The only other crib-wharfing on sec. 19 that I have any note of is between 79 and 83, and 87 40 and 91. I suppose there is crib-wharfing at 58, from a note in my book, stating the dimensions to be the same as at 80.

In estimating the amount of borrowing, I assumed that all the rock from the rock cutting went into the embankment. If the rock out of the cutting was used in the rip-rap, it would necessitate a corresponding excavation to make up the embankment. Borrowing is a term applied to the excavations obtained outside of the line cutting,

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for the purpose of making up embankments where the quantity contained in the cuttings is not sufficient for the embankments. I have made no estimate of crib-wharfing at 58. I measured crib-wharfing from 79 to 83, 4,249 yds (cubic); also from 87 to 91, 5,384 cubic yards. (Objected.)

Cross-examined.—Alexander McDonald first applied to me to measure crib-wharfing and rip-rap. I had never before been on section 19. I had previously asked Mitchell and Oakes as to measurements. I was acting in the employ of McDonald. Intercolonial Railway was not in operation on that section, nor rails laid. Rails laid the next year, when I was there. I have no recollection of seeing any other contract than McDonald's. I am not sure whether I saw McDonald's contract at first measurement. I had not Tuck's contract at either measurement. Mitchell shewed me the bill of works at the time I made the measurements in 1876. I have no recollection of seeing it on the ground. McDonald shewed me a plan of the crib-wharfing and rip-rap at the measurements in '75, which he said had been given him to work by. I made the tracing of the cross sections for the whole of 19 in '76 when I went up to make the measurements. These were the amended cross sections on which the work was constructed. At the measurements in '76 I went for Mitchell & Oakes. They were measuring the whole of section 19. In '75 I opened up the face of the crib-wharfing at the top, so as to see the thickness through at the top, but not at the base. This applies also, as to my examination, of rip-rap. This was the only time I uncovered any part of the crib-wharfing and rip-rap. I uncovered a portion of each piece of crib-wharfing, and also of rip-rap. I assumed the back of the crib-wharfing to be perpendicular from the extreme rear of the top. In making up my measurements of the bottom of the rip-rap, I saw the width at the bottom from a plan similar to plan S, I hold in my hand. According to plan S, the base of the rip-rap would be three feet. I cannot tell the language used that led me to infer that I was measuring for a settlement between Mitchell and McDonald. One of the facts from which I inferred it was that Mitchell shewed me McDonald's contract commenced and ended. After I made up the general return of all the measurements on section 19, Mitchell wished me to make a particular measurement of the work between 162 and 380, 30 for the purpose of settling with McDonald. I first saw the original cross sections in '76. I had not seen the original till long after I made the return I gave Mitchell to settle with Mitchell. I was only to give Mitchell the measurements at the time. I did not know whether McDonald could be settled with without reference to the original cross sections. I never took into consideration any work done by Archibald, Vosburg, or the work done by McKiel or McKenzie and Alex McDonald & Co. The returns handed Mitchell for settlement with McDonald are the same as those produced in court, with the exception that I added the percentage to the one produced in court. I merely gave Mitchell the measurements on the ground. There was no distinct understanding that I was measuring the ground for a settlement between Mitchell & McDonald. 40 Omitting the percentage in the measurements given to Mitchell was an omission on my part. A 1 is in my handwriting. I won't swear positively whether B 1 is in my handwriting; I believed it to be. It is a moral impossibility to tell from B 1 whether the totals in it are made up from the details in A 1 between sections 162 and 380. There is a difference in the totals of earth-excavations between B 1 and P P of over 8,000 cubic yards. Borrow-pits are entered in miscellaneous work in returns P P. I did not give C 1 to Mitchell. I can't swear positively whether I gave

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Mitchell any returns between sections 162 and 380 besides the one he lost and the one similar to the one produced yesterday. The 155,514 cubic yards of embankment in Q Q is made by adding 12½ per cent. to the cubic yards of embankment. The 22,510 cubic yards of earth spoiled in Q Q is from a calculation made from a cross-section of the excess of the cutting over the embankment, and I add to the difference between the two and the contents of the borrow-pit measured on the ground. I calculated the balance of borrowing by estimating the excess of embankment over cutting, and the three added together came to the same as my estimate of the total quantity of embankment from the cross-sections. In the return P P I give the rip-rap at 5,369 cubic yards. The rip-rap in the first return of the paper B 1 is the first 10 return; does not agree with the return in P P by 5,000 yards, because the return B 1 contained all one return of the rip-rap at Clarke's Brook. If Mitchell pays McDonald on B 1 he will only receive pay for 369 cubic yards. I could not tell whether there would be sinkage between 163 and 380. In adding the percentage, I was governed by information obtained from the government engineer; also from the bill of works.

I think I had been in Ottawa, before the Exchequer Court, before I made my first return to Mitchell. I had tracing of the masonry and cross-sections at that time. I made up Q Q since I was subpoenaed here, for the purpose of showing the amounts for which McDonald was to be paid. E 1 is in my handwriting, and is the same as 20 P P without the percentage. B 1 is not the paper I gave to Mitchell as the statement of McDonald's work; it is merely a fragmentary statement. Mitchell went to me after I had given evidence in the Exchequer Court, and asked me to give him a statement of the measurements between 162 and 380, as he wanted to use them in settling with McDonald. I can't say whether I gave him B 1 in response to his request. I don't remember when I gave Mitchell B 1, telling him that there was about 4,000 cubic yards of the 6,119 put down for miscellaneous work that was calculated from the borrowed pits that went into the embankments, and that if he settled with him on that calculation of the embankment, he could deduct the 4,000, but for the purpose of getting a settler it would be as well to allow it. I have 30 no recollection of saying to Mitchell on that occasion that he could settle with McDonald by that paper; that it was all right; that I would not allow him any more; and that, if he got paid by that paper, that it would be all right. I did not tell Mitchell, on the same occasion, that McDonald ought not to be paid for the rip-rap, but that he should allow him for the hand-packing, but that was none of my business.

I never produced to any, until produced in court yesterday, a paper showing as large a result as Q Q; Q Q exceeds any previous statements as to line-excavations; 66,011, plus miscellaneous work, which is 6,829 cubic yards earth and 104 rock; those two last items included in the other returns P P. I erred in stating that the excess 40 included the miscellaneous work. I was obliged to go on the work because Mitchell said he had done work in excess of the cross-sections. My measurements between 162 and 380 differ from P P by 66,011 yards. P P contains measurements I could not make without going on the ground; that is, the miscellaneous work. I cross-sectioned the whole work on the ground. I could do this after the road was built.

I could have cross-sectioned the cuttings with the level. I could get the original conformation of the cuttings on the sides of the cuttings, and I was furnished with

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the original cross-sections of the work as actually done by the government engineer; from these I obtained the centre heights. I could have calculated this without going on the ground if the work had been constructed according to the original cross-sections. I used the level for ascertaining the elevation of the ground on the side of the cuttings. In some cases this did not agree with the original cross-sections. I cannot tell what difference this error made in the totals. The excavations in some cases did not agree with the original cross-sections. Between 241 and 259 the quantities returned are from the original cross-sections, and not from measurements on the ground. I calculated the embankments from the cross-sections. I did not need to go on the ground, as far as the embankments were concerned. From 339 to 361, 10 plus 30, the quantity of embankments is taken from the cross-sections furnished me by Grant. He told me that they were not the original cross-sections, but those on which the work was done. P. P. shows the work as actually done between 162 and 380, except between 247 and 259, where it shows the work as originally projected in the cross sections. P. P. does not include the 500 feet of crib-wharfing. It only shows the crib-wharfing actually built between 162 and 380, not including the 500 feet between 247 and 259. It does not show what was originally projected between 247 and 259. There would be 43,501 cubic yards more culverts in the embankments than in the cutting supposing all the earth had been used, leaving the 1600 out of the question. There is no reference to 1600 ft. in the first page of P. P. It shews the 20 total excavations and the total embankments on the road; according to my calculations it shews an excess of embankment over cuttings of 26,222 cubic yards. Adding the $12\frac{1}{2}$ per cent. there would be a difference of 43,501, in other words, that quantity would have to be borrowed, assuming that all the cuttings were to be used in the embankments, and assuming that the $12\frac{1}{2}$ per cent. was added. Between 337 and 380 on the line excavation, there would be 40,848 of line cutting to that work. I should have to add 104 yards rock and 3,603 of earth. This 40,848 includes the borrow to make the embankment, and the 3,603 earth and 104 rock is miscellaneous. This is allowing the $12\frac{1}{2}$ per cent. I returned from 339x50 to 355x50, 9,380 cubic yards of crib-wharfing outside of the masonry. These figures shew all the work 30 done between 337 and 380. I made no returns for paving. I had nothing to do with masonry. The last item of miscellaneous work rip-rap, P. P., Clarke's Brook, represents the filling round the piers. This is the the measurement above ground. I have shewn no stepping stone. There is a cutting from 230 to 238. I have returned from the cuttings 3,192 yards rock and 16,453 of earth. The material from the cutting between 230 and 238 would not make the embankment between 238 and 259 by 12,140 yards without allowing any percentage. Rock makes more embankments than its cubic contents. I do not know the work done between 162 and 380. Done by Alex. McDonald & Co. The spoil I have allowed 210 for is between 299 and 340 x75. The borrow ranges between 162 and 375. F. 1 is the particulars of the borrow- 40 ing between those stations made on the basis of 22,510, having been spoiled as in Q. Q. G. 1 is a statement of the stations where the spoil. (F. 1. G. 1 tendered and received by agreement at this stage.)

Re-examined.—My estimate of the work between 337 and 380 is on the assumption that none of the cutting east of 337 went into the embankment west of that station, if it did it would lessen the borrowing. I cannot say whether B 1 was made before or after I had seen the cross sections between 247 and 250. I cannot say whether B. 1

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was prepared before or after I went to Ottawa and saw the cross sections of 247 and 259. I infer from a note in B.1 as to the cross sections between 249 and 259 that it was before I had seen the original cross sections. B.1 must have been made after I measured the work on the ground. I never made any statement as to excavation or embankment till after I had made the measurements. I made no measurements of the following items in B.1: excavation of foundation, masonry, paving and concrete, the reference to them must have been derived from the bill of works or from plans furnished by Grant, the calculations of which I did not make.

The difference between P P and Q Q as to the amount of excavation arises from Q Q showing the borrowing and P P not doing so. The totals of the two separate state- 10
ments in P P and Q Q as to 162 to 337, and 337 to 380, would be, as to excavation, 187,207. The total of the line from 162 to 380, taken as a whole, is as to excavation 178,024. The difference arises from the fact, that in my computation of the spoil in G 1. I have assumed that the excavation between 335 and 337 would be deposited on the embankment between 339 and 351, which would not occur if from 337 to 381 was a separate contract from the eastward of 337. In that statement (F 1) 1,600 feet is the extreme distance for a haul. I did not mention to Mitchell that the 12½ percentage was omitted from the first statement. I had no conversation with him since I added the 12½ per cent. in the estimate I made up for Mitchell of the work on the whole section, in my evidence for Mitchell at Ottawa. Mitchell was present when I gave the 20
evidence. A note in the bill of works guided me in making 1,600 feet the extreme limit. I found this was the rule adopted by the Government. The bill of works was furnished me by Mitchell. (Objected.) I received the cross-sections from Grant at the time Mitchell went with me to make the measurements. Mitchell knew of my getting and using these cross-sections. Mitchell supplied me with the profile. Mitchell was at section 19 when I made the first survey. Mitchell knew at the time that I was there measuring the crib-wharfing. I told him I was going to make the measurements.

The actual excavation between 247 and 259 I do not think is contained in B.1. B.1 is a mere fragmentary statement, and I cannot tell for what purpose it was made up, or whether the projected excavation between 247 and 259 is included in it or not. 30

G 1 and G 1 constitute a portion of the tracing of the cross-sections made at Ottawa by me, in the engineer's office, in Mitchell's presence. I had these copies in my possession the day before yesterday, when I referred to them in my evidence at that day. I gave them to Mitchell at his request, and got them back from him this morning with a piece torn out.

Re-cross-examined.—I had examined the tracing half hour before I came into court. It was then all in one piece. I saw Mitchell when I was measuring the work; he was in his bed. I know the rule of 1,600 feet was the rule adopted by the Government, from what Grant told me and from the bill of works. I have no mention in my field-book of any note of extra width beyond the cross-sections between 299 to 305. The 40
measurement at the top of the slope was from 22 to 35 feet from 299 to 305.

APRIL 17th.

CHARLES H. PALMETER.—I live at Grand Pre, King's County; am carpenter. Know Alexander McDonald; worked for him on section 19 Intercolonial Railway. I

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was doing the wood-work in connection with the crib-wharfing. Had charge of laying the timbers. I worked on two pieces of crib-wharfing; one piece between McKiel's and the rock cut. It was the piece nearest McKiel's crib-wharfing. Another piece was near Kane's Brook, up stream of the river.

At the first piece.—I worked from the beginning to the end; did most of the work; I finished it. I was foreman of the wood work. Innes was inspector of crib-wharfing; Innes had a plan from which I built; he was there most every day. I put down the stringers along the shore, then ties into the bank; the logs used would be from 2 feet to 9 inches; 9 inches the smallest that I was allowed to lay. We selected the largest pieces for stringers, stringers placed on ties, and so on to the top. The 10 height of the crib-wharfing at the front would be 12 feet. Stone was placed on the top. On the back it was built plumb; the front was carried up with a batter of 2 to 1. I saw some of the ballasting; after being built up, the crib was filled with rocks, this was the front; the back was filled with gravel. Some of the rock was got from the river. The beach of the river was pretty flat. We had a plan and batter-board, made from the plan to lay the front by; I made the batter-board.

At the second piece.—The second piece was built like the first; the ties were fastened to the stringers by juniper-treenails; gravel and sand composed the embankments.

Cross-examined.—There were five or six stringers in the back; the bottom tie would be from 22 to 23 feet. From the back end of first, the crib built up plumb. This 20 plan differs from the way the work was done in some particulars. The bottom tie would be third tie, according to plan K; the crib-wharfing built by me. was built according to plan, as far as the size of the timber would allow; this plan is not a correct representation of the work on the ground. At Farmer's hotel, I gave Mitchell some information about crib-wharfing. I did not tell Mitchell that there were only two stringers at the back; I did not tell Mitchell that there were only two stringers at back, and that from the upper of these stringers the crib-wharfing was built, with the same batter at back as in front. I did not tell him the longest ties used were 16 and the shortest 12 feet. I built the crib-wharfing, that is the first piece before the embankment; the embankment was partly made when the second piece was built; I built the first piece for McDonald; 30 he gave me an order on Mitchell; the order was not paid; the amount due me is about \$260.

Re-examined.—The timber put in wharf was larger than the timber designated on plan. There was no stringer until the third tie commenced, and that rested on the ground; the tie that the first stringer rested on was 22 or 23 feet long; the back from the third stringer went up plumb; the height would be 12 feet from the base to the top.

Re-cross-examined.—I put in 6 or 7 sticks in the work where plan K shows 12, and therefore I say the timber shown on plan is larger than the crib-wharfing shown by me. On re-examining the plan, I find there 11 sticks, not 12, as above stated.

WILLIAM TREMAIN.—Live at Truro; am civil engineer for 25 years. I have been 40 engaged in building the Pictou and Intercolonial, and also on railway work in Canada. I was district engineer on the Intercolonial. I was in charge of the N. S.

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district, comprising four sections. I have made measurements of quantities of rock in portions of section 19, from sections, not from the ground, between 162 and 380. Plan D is the cross-sections from which I calculated, except as between stations 247 to 259, $\times 25$, which I calculated from cross-sections on a sheet of tracing-paper handed me by O'Dell marked G 1, in two pieces. I compared G 1 in its complete state with the sheet of cross-sections marked O O, and found it to coincide. I made up a statement of the results of my measurements.

A paper (H 1) showing the results of Mr. Tremain's measurements, is admitted. Mr. RIGBY objecting that Mr. Tremain's evidence is of no value, and should therefore not be received in view of O'Dell's testimony that it was impossible to make correct 10 measurements from the plans without going on the ground. Mr. RIGBY agrees that the statement should be received, instead of going into the details.

H 1 is a correct calculation of my measurements. I made calculations of crib-wharfing from 340 to 355 from the cross-sections 1 from O O, and made the calculations from cross-sections from plan. K 1 is the statement; it is correct. The calculation of the crib-wharfing is made entirely from the cross-sections. I assumed that the back of the crib-wharfing was plumb at the back. The cross-sections showed a burin of 6 feet. The cross-sections gave all necessary to make a calculation, except the back line. The quantity of earth-excavation between 340 and 355 $\times 67$ is 33,096, calculated from O O. This is in excess of the quantities between those 20 stations shown on D 2,532 cubic yards.

Cross-examined.—There is nothing on the cross-section to distinguish between the timber and earth-covering of crib-wharfing. The cross-sections only show the outer sloping. On plan O O the outer line of the piece marked J W J is the outer line of the crib-wharfing; the inner line, the outer line of the embankment. Crib-wharfing could not be built in this shape as represented on the section; the pencil lines in O O made by me. I calculated the crib-wharfing as included between the inner pencil perpendicular line put on plan by myself, and in so calculating I entered what is marked on the cross-sections as embankment. If the cuttings all went into the embankments between 162 and 380, the quantity of borrow required would be the 30 difference between 146,526, 41 cubic yards and 103,179, 04 cubic yards if the $12\frac{1}{2}$ per cent. was not allowed; but if the $12\frac{1}{2}$ per centage allowed for sinkage and shrinkage, the amount would be increased by 18,315, 80 cubic yards. The statement at the bottom of H 1, is to shew the borrowing and spoiling; the extra borrowing is in consequence of a limit having been placed on the hauling; the lower statement shews a larger amount of borrowing than the upper; this is in consequence of my having divided the line at two points, 305 $\times$ 50 and at 337; I calculated the borrow and spoil separately and between 162 and 305, as if it was one separate piece of work; between 305 and 337, as if a second piece of work, between 337 and the end of section as a third piece of work.

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Re-examined.—The dotted line on plan R., J.W.J., corresponds with the line on cross-sections O.O., marked with X. Between 305 $\times$ 50 east to 162, there is no spoil in the calculations. I consider $12\frac{1}{2}$ per cent. a reasonable allowance for shrinkage and sinkage; I have allowed spoil only in the cutting between 317 and 337.

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Re-cross-examined.—The $12\frac{1}{2}$ per cent. is a fair allowance for ordinary work ; it is the usual thing to allow $\frac{1}{2}$ in ordinary work. $12\frac{1}{2}$ is a fair allowance, whatever the material is

APRIL 19.

WILLIAM WALTERS.—Live at Brookfield, Colchester Co. ; am a laborer ; worked sec. 19, McDonald's contract, in '78 ; I worked at rock and earth-work ; the earth-work was sand and loam, with some clay and gravel. There was no more than $\frac{1}{4}$ of gravel in the line excavation. The material in the borrow pit was principally loam and sand ; there was not as much gravel by one half as in the line excavation ; there would not be an $\frac{1}{8}$ of gravel in the borrow pits. The crib-wharfing was made before the embankment. I do not mean crib-wharfing was all finished before the crib-wharfing, but it was kept ahead of the embankment. In finishing up the work on sec. 19 for the government, I was foreman. I went over the work to see if anything was necessary to be done preparatory to laying the track. Less than a day completed what was to do. I went over from a point about one mile from the eastern end of 19 to the west end. All that I found necessary to do on McDonald's work was to fix up some slight slides that had taken place during the winter. I work down near Gilmour's brook when I was on the work ; the borrowing pits were used under Grant's direction. (Objected.) 10

Cross-examined —I did not hear Grant direct the earth to be taken from the borrow pits ; Grant came down, saw us working, and said it was all right. I was about a $\frac{20}{100}$ quarter of a mile away from the borrow pits ; can't say whether I could see it or not when I heard Grant tell the foreman to get material from the borrow pit ; I can't tell how many pieces of crib-wharfing there were.

ALEXANDER ARCHIBALD.—I live in Cumberland Co. ; worked on the Intercolonial on sec. 18, adjoining 19. I was working on sec. 18 four months ; I was back and forward during that time over McDonald's work, over the embankment ; a mixture of loam, sand and gravel in the embankments ; there was more sand than any thing else.

Cross-examined.—Have been over 19 six or seven times, and called at places to see men I was acquainted with.

EDWARD WHIDDEN.—Live at Oldham ; worked for McDonald as foreman on sec. 30 19 ; I attended to earth and rock work. The earth was composed of loam, the top of it, the rest was gravel and clay and some sand ; I only worked in one cut ; I saw the men borrowing most loam.

Cross-examined.—The borrow pit was pretty near the end.

Articles of agreement sec. 19 produced by RIGBY, under notice to produce. Received ; marked M. 1.

Mr. RIGBY produces objections to the claimant's amended particulars.

Mr. GRAHAM objects that the objections go further and cover more ground than required by the amendment.

Agreement of Feby. 1, '72, admitted ; marked N 1.

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It is admitted that the assignee received money on account of the original contract about the time claim was filed, to \$20,000 net.

MARCH 23.

Examination of Bernard Mahoney taken out of its course, in order to enable him to return home.

BERNARD MAHONEY sworn.—Live at Restigouche, L. C., about 8 miles from McDonald's contract; know McDonald, as also Mitchell and Oakes; worked at crib-wharfing part of three summers, rafting and driving cedar in the river to the works; also bedding. I was foreman in the building of one piece of crib-wharfing; Mr. Innis was inspector. We had large cedar logs in the bottom. One of the reasons why large logs were used, was to get above water-mark as soon as possible; it took some places 2 and others 3 tiers to get above water-mark; rolled away boulders from the bottom, to prepare foundation; first logs laid parallel to the river; the outside place for the logs was marked by the engineer. We built out to mark. The average of the two bottom cross tiers would be 23 to 24 feet. Sometimes the under end would be clear of water, sometimes not; I am speaking of low-water line. The above average includes the logs that were shorter, in consequence of the inner ends being cut off to avoid the rock. The slope was 2 to 1. I worked on three pieces of crib-wharfing. I drove cedar and delivered it; a fourth piece of crib-wharfing; I was foreman of the piece built at McLean's brook and superintended it from the foundation; worked by plans shown me by inspector and McDonald; and also under inspection instruction. Some of the bottom cross-ties would be 25 feet long. The average depth, where I was working, was in some places two, in others three; in some places four feet. When water was deep, we had to join the cross-ties to the stringers, lay poles on the cross-ties and sink the logs with stone. The average perpendicular height at the back would be twelve to thirteen feet; the back was straight up and down. There might be a difference of from 1 to 1½ feet in height, in a perpendicular line from the outer edge of the beam downwards than at the back. The crib-wharfing was ballasted with stone, some boulders out of the river, and some blasted stone out of the cuttings. The inspector wanted the stone mixed, as the stone out of the river was smooth; stone packed inside, and packed and built up outside. The end of the ties projected about a foot beyond the stringers; they were covered by the packing; used the blasted rock for ballasting pretty well up to the last tier. The culvert was packed by hand. Worked at another piece opposite the road diversions. The lower sticks would be about the same in this, as in the other. The style of construction was the same as at McLean's brook, and the average depth of water about the same. I drove the cedar and worked at crib; I saw the ballasting done, but did not work at it. The next piece was at Kane's brook; I worked at it and brought cedar; this was deeper and stronger; used the largest cedar we could get for the bottom, so as to get out of the water as soon as possible. The height, length and back about the same. We used shorter ties when there was projecting rock, used longer ones each side and above it. I drew logs for a front-piece above McLean's brook; logs used about the same dimensions. The work was going on as we brought the logs; I rolled logs for a fifth piece at Man's hill, they were larger; saw the piece being built; it was constructed in the same way. Saw Mitchell at the piece of crib-wharfing I built my-

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self; saw him there but once; never saw Oakes there. Some days Innis would be at the works every day, sometimes once, at others twice. All the crib-wharfing was plumb at the back.

Cross-examined.—I am a farmer; had never seen this contract; built crib-wharfing; had seen crib-wharfing done before. The first wharfing I ever saw was the wharfing McDonald built on that section. I worked steadily $2\frac{1}{2}$ months the first year. McDonald gave me a plan to work by; I measured some of the sticks, but don't remember the number; I measured them after I put them in; I measured some in all the tiers; I was more particular with the lower tiers; I measured the logs after I tried them, and before I sank them. There was nothing to be shorter than 18 feet in the tiers, in the bottom tier; I was so instructed by Innis and McDonald; they were 11 or 12 in length at the top; we used the level; we had no plumb. I can't swear to the length of the tiers in the second tier; no one told me the average; I made it by my own calculations. The inspector looked at the work and told me it was all right. I don't remember seeing ties as short as 9 feet. The batter was made by a board made for the purpose. The average length of the first and second row of ties, was 23 to 24 feet; the second and top tier of ties would be 11 to 12 feet

Re-examined.—The top log ran into the bank, although the second tier from the bottom did not project so far outwardly; the bottom tier projected further inwardly. The 17 feet ties were used where the bank projected.

Examination of John R. McKenzie, a witness, examined because he wanted to leave.

JOHN R. MCKENZIE SWORN.—Live at Acadia Mines; am a farmer; know McDonald, Mitchell and Oakes; worked under McDonald at general work; McDonald was a sub-contractor; his contract commenced at section 18, and extended eastwardly about 4 miles. Worked $2\frac{1}{2}$ years; worked first spring of '71, I think; worked at crib-wharfing one summer in '72 or '73 at Kane's brook, built of cedar and stones; depth of water between three and four feet. First log stringer up and down the bank; the rest was a tie going into the bank, 23 or 24 feet in length; timber all about 14, 16 and 18 inches in diameter. Worked at ballasting; helped to ballast three pieces. Innis, the inspector, had a plan there. He gave directions how it was to be built. Slope 2 to 1; back perpendicular; height at back, between 11 and 12 feet; width at top, 13 or 14 feet. It would run over the others into the bank perpendicular at end of burm, more than the perpendicular at the back. I helped to ballast; all crib-wharfing done the same way; I helped to ballast three cribs; worked on one; all the cribs were built in the same way; the timbers about the same length, height and level; stone packed by hand inside and out. We had to clear boulders away in bottom of river; when rock projected in bank, used shorter ties; ballasting was carried up to top tier; Innis there every day; sometimes twice a day; have seen Grant on the grounds; worked at the sluicing; there was waste up line from this crib-wharfing; saw men carrying away and dumping about a dozen carts; one summer and all winter, packing round the culverts done at Clarke's brook; 8 or 10 men engaged with me on an average. The packing round the piers carried up 12 or 14 feet; obtained stone from quarry up the river and from a rock cut. The paving took us weeks; the space filled in round the piers was 5 or 6 feet. Lowery was superintendent of masonry, and superintended this packing work; the first

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two tiers would average 23 and 24, the second tier would run further into the bank. After that they were carried up shorter and shorter, and were plumb at the back. The outside filling covered all the ends of the logs. I helped to prepare foundation for culverts. One culvert was excavated between two and three feet, to get foundation level. We used smooth stones out of the river and rough stones from the quarry; smooth boulders would not stand, and had to be packed with the rough.

Cross-examined.—Was a laboring man; had charge of the men in sluicing: Chas. Parmeter my foreman. I cut some of the sticks. I measured them by Parmeter's direction; I never worked at crib-wharfing before. Stringers at back, as well as front. The shortest ties would be about 8 feet. All the ties in the third tier from bottom would be 10 of equal length, 18 or 19 feet. There was 11, 12 or 13 feet that was plumb. The top of the crib was nearly level; the men who were wasting the bank, were working from $\frac{1}{2}$ to 1 mile from where I was. We packed up 10 or 12 feet from the top of the whole.

Re-examined.—I did work on rip-rap. Worked on one piece. Got the stone out of the river and from rock cuttings. Rip-rap is a protection bank of stone against the river. The piece I worked at was about 200 yards. The locus was east from Man's Hill. Scows brought the stones chiefly. About twelve men were employed. James Lowrey superintended the work. We dumped first and then built up by hand. The slope was about as steep as the crib-wharf. Worked at another piece of rip-rap by the blacksmith's forge.

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Cross-examined.—We scowed stone about a quarter of a mile. We got considerable stone, about one-third, from rock cuttings. The river opposite rip-rap was about 109 yards wide. We used the stone in the cutting in filling in the back of the rip-rap. The rock out of the cutting, if used would have built 600 yards of rip-rap. There was more than enough stone in the cutting to have built the rip-rap when we commenced, if it all had been used for that purpose. The stone was used for filling up between the rip-rap, and the bank formed part of the rip-rap. Rip-rap was built in tiers and filled in. Did not use any round stone out of the river for the front of the rip-rap, only in the back. The rip-rap would be 10 feet at bottom and from 5 to 6 feet at top. It was about 10 feet high at the back.

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THE CLAIMANTS' REST.

CONTESTANTS' EVIDENCE.

RIGBY produced certified copy of Equity Writ, *McDonald and others vs. Murray and others*, for the purpose of proving that there is a suit pending in the Equity Court for the same subject matter as this contestation (*received, A 2.*) Subject to objection, it is admitted, suit still pending.

Contract of McKiel produced and read (marked B B.)

GRAHAM objects; paper not under seal, no consideration and irrelevant.

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Peter Grant's evidence before commissioner is read by consent, subject to objections taken before commissioner—he to be examined supplementary.

John Jillett deposition, subject to all objections.

Exhibit A and the certificate of Grant and Jillett to the commissioner (marked by me C 2, D 2.—(Objected to by GRAHAM, and that the witnesses should not have been allowed to refresh their memories from them.)

Extract from McDonald bill is admitted (marked E 2.)

The copies of the calculations and Bell's evidence received as originals.

Peter Grant's evidence is received.

Jillett's evidence is received.

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APRIL 21st.

PETER GRANT.—Am engineer. Experience thirty years. Employed by Dominion Government on sect. 15, Canada Pacific. I was seven years on the Intercolonial as divisional engineer in charge of sect. 18 and 19. My duty to see work well done and up to specifications, and to return progress estimated, which is a statement of the work done monthly, I can tell the work done by taking field notes monthly. I ascertained work done by actual measurements. I kept a record. No other measurements than mine taken. I was on section 19 every day, but not on the work. I was on some part of the work on an average every day. I was engineer during the whole time of Mitchell & Oakes' contract. No work done on section 19 except under my 20 supervision. I kept an account of the work of the sub-contractors district for the benefit of contractors and sub-contractors. I kept distinct account of the work done by Archibald & Vosburg, McKenzie, McDonald & Co., and Alex. McDonald & Co., between stations 162 and 380. I made C 2 after the work was completed, at the request of McDonald & Oakes. McDonald was preparing to leave Metapedia. The request was made at my office in the presence of Oakes, McDonald and Jillett. They asked me to make up a final measurement, so that they could settle. I agreed to do it. Jillett was to go into the details. I understood that my measurements were binding on both parties. I said to them it was no use my making measurements unless both parties agreed to be bound by it. I had very little necessity to go on the ground 30 because the measurement had all been taken on the ground previously. I made two original copies of C 2. They were left in my office about a month. parties not having called for them at the end of that time. I mailed both copies to Oakes. McDonald had left some time previously. C 2 statement is correct, to the best of my knowledge and belief. I included in my paper C 2 the work done by all the sub-contractors except McKiel, and deducted Archibald & Vosburg's work because they did not complete their work, and Alexander McDonald finished it. I kept McKiel's work separate, because I had the figures all beside me, and there was no necessity to mix them up. I do not know whether McKiel was a sub-contractor of McDonald or not. (Objected.) If he was a sub-contractor of McDonald, 40 the amount performed by him is in paper O 2. McKiel was paid in full for all the work done by him, and I had the papers connected with his work carefully put away, and had not to refer to them again. I can't tell whether the crib-wharfing in the statement includes that done by McKiel.

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Paper C 2 includes the work done between stations 162 to 380. The total earth-excavations is the total excavation between those stations.

Ques: Was, or was there not, any earth-excavation besides those marked "total earth excavations," between those sections? (Objected to.) I allow the question, subject to the objection. *Answer:* McKiel worked between those stations; total excavations included McKiel's work; the paper includes all the work done except that done by previous sub-contractors. Between 247 and 253 the road was moved back at the request of Mitchell and Oakes; they thought they would save money by saving the crib-wharfing. The request was made about the time McDonald took contract. McDonald knew of the proposed change; he was present with Oakes when request 10 was made, and asked for an idea of the quantities. The road was to have been moved 13 or 14 inches. McDonald did the work; he placed the road too far in, and had to move it out. The slopes were done as I laid them out. The quantity of land sluiced down was very great, and in order to save McDonald the expense of carrying away the surplus, the road was moved out again towards the river. In one place, where there was a 20-foot embankment after the sluicing there was a 20-foot cutting. At that place the road was not built according to the contract or to the change; a medium was taken. Following the medium line was a very great advantage to McDonald; I saw it would do no harm to the road. In consequence of moving the road, 500 feet of crib-wharfing was required to protect the road. Had the road been built according to the change, no 20 crib-wharfing would have been required. For the same reason the rip-rap was slightly increased about stations 244. I saw all the crib-wharfing that was built between stations 162 and 380 during the progress of the work, many times.

Q. Would it give the contents of the crib-wharfing correctly to assume the inner side, or bank, to be a perpendicular line from the inside of the burm to the bottom? *A.* It would make the quantities very much larger than the actual contents of the crib-wharfing, because it went through a rough country, the average slope of which was $1\frac{1}{2}$ to 1. The back of the crib-wharfing leant on to the slope about $1\frac{1}{2}$ to 1; it was not perpendicular. The logs used were of various lengths, from 6 to 15 and 25 feet. I do not think I ever saw a cross-tie longer than 16 feet. 30

If the crib had a 6 feet burm, its perpendicular height 12 feet, with a batter in front of 2 to 1, the bottom log would be 30 feet long. The average height of the crib-wharfing was 10 feet, from the water-level to the burm. The statement of McDonald that the lowest perpendicular height of the crib was 12, and the highest 18, would give a correct idea enough. The line marked with A x on O O is the slope of the embankment; the outside line is the crib-wharfing. The inside line would not represent the back of the crib-wharfing. The inside line means nothing at all, as far as the crib-wharfing was concerned; it is simply a prolongation of the slope of the embankment. In some cases the back of the crib-wharfing had to be made perpendicularly. It depends on the conformation of the country whether the back sloped or was perpendicular. There were two or three places between 162 and 380 where the back had to be perpendicular. The heaviest piece was about at station 310 and about 350. At these stations the back was perpendicular. That was all where the back was perpendicular. I allowed for this in making my calculations. Where the back was perpendicular it would take about three times as much to fill the crib as when it sloped. 40

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The paving would be worth \$3 or \$4 a cubic yard; that would be \$1.50 or \$2.00 the superficial foot. It was not worth as much as second-class masonry. Paving was roughly done; it was not groited, as I remember; groiting would be double the price. It would not cost as much to blast out the culvert at Man's Hill, as by the original contract there would be a saving of about two-thirds. Masonry would be worth \$12 a cubic yard; culvert masonry, or second-class. Know the rip-rap between 162 and 380 was to be two feet thick at the top, and thicker at the bottom; altogether, 3 or 4 feet. Plan S is a plan in connection with section 18; has nothing to do with 19; it is a plan of substitution for crib-wharfing. I did not order McDonald to do any rip-rap on 19 according to that plan. It is not a plan of rip-rap at all. I don't think there 10 was any rip-rap on section 19 as thick as 8 or 9 feet at the bottom. I would not be allowed to exact any such thickness. Stones packed round culverts in McDonald's contract; allowed for that under the head of paving. Packing is to protect the earth from coming down and getting into the culvert. The packing round the piers of bridges I allowed as rip-rap; that is fair. The stone used for packing round culverts would be the debris from the structure itself. The stone from the line cuttings was put into embankments and used for crib-wharfing. I allowed the contractors to have their own way. I know of a rock cutting at 303, it was used for building purposes. The width of the cutting at 303, should be 22 feet at the base, not more than 27 at the top. I did not require stone from this cut- 20 ting to be put in the rip-rap, any stone would do for rip-rap. The ground does not allow borrowing rock, and anything beyond 23 feet at the base and 27 feet at the top are not shown on the plan of cross sections. The stone and all the packing round the piers, Clarke's brook, came from the debris. McDonald had a quarry $\frac{1}{4}$ mile away. Most of the stone used in the bridge came from that quarry. Some of the stone from that quarry was condemned by me or the inspector, probably by both of us. Know of Archibald and Vosburg; commenced an embankment at 276; they only made a beginning. Alexander McDonald took it up and carried it along. I don't think it was over 200 feet long; he could only utilize for his embankment a little over $\frac{1}{2}$ of the old one. I deducted nothing from him on account of the $\frac{1}{2}$ he used. The 1600 feet haul 30 was returned to the government and McDonald had the benefit of the 1600. I allowed 10 per cent. for sinkage and shrinkage; that was allowed all along the line by Fleming's direction.

Q. Where a person is paid according to a fixed price per cubic yard for excavation, do you allow for sinkage and shrinkage? A. No; we would allow according to pit measurement, or according to the contents of the measurements of the pit. (Objected.) O'Dell was about one week going over the road, when he made the measurement. It could be possible for an engineer to measure the work from the cross sections without going over the ground; it would take a great deal of time; he would have difficulty in making up an estimate of the work done, because the cross sections do not 40 show the borrowing and spoiling; he would have to go to the ground to make an estimate of the borrowing and spoiling. An engineer would have to measure the cuttings and the embankments, to make a good job. It would be very difficult to make a reliable estimate without measuring the embankments on the ground. It would not be possible for an engineer to measure sec. 19 in 7 or 8 days.

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Cross-examined.—My subordinate engineers were Cadmen, Jillett and Mitchell. Lowrey was masonry inspector; Innis, inspector of crib-wharfing; Lowrey and Innis worked under my control and direction. I directed Lowrey and Innes how the work was to be done; they instructed the contractors; some times I personally directed the contractors. I would have dismissed the staff, including the inspectors, if they had refused to obey my instructions; I would have reported any contractor refusing to carry out my instructions to the chief engineer. My directions were carried out wonderfully well. Otherwise than as to the sluicing, McDonald carried out my instructions very well. There was no direct disobedience as to the sluicing. Wages and materials very high at that time; 25 per cent. higher than they are now. Cost of first-class masonry, \$16 cubic yard. The masonry done by McDonald on section 19 was not first-class masonry. It was better than second-class, I think. I admitted that all the masonry on that section was first-class, except four culverts which were dry masonry. I qualified the statement that the stones were too small. This admission was made in my examination before the Exchequer Court and before the arbitrator. I could not tell before which tribunal I made the qualification. The culverts were first-class masonry, except the dry culverts. I think there were two dry culverts on McDonald's contract. The masonry at Clarke's Brook and No Man's Gulch were first-class masonry, and all the other culverts were to be second class masonry under the contract, except dry culverts. (Objected.) Paving not necessarily built by masons. These pav- 20 ings were built by masons. The ideal paving is square blocks, and put together in a way to break bond and groiting poured over it as much as it would take in. This ideal paving was not in specification and can't not be exacted. The paving was not done up to the specification. The paving was in all the culverts except three or four. The paving was measured in cubic yards for the Government. I forget how it was estimated for McDonald. I never saw groiting used in the culverts. It might have been used without my seeing it. I cannot swear that there is not groiting in the paving to-day. The stones were set on edge, broadside and every way. The paving not well done. It was worth \$5.00 a cubic yard. It was at Kane's Brook that I described the work as being well-done and groited, and the specification exceeded. 30 Marcus Smith was district engineer for the Restigouche district for about a year; then Bell for the same length of time. Flemming was chief engineer. I went to the Restigouche district in 1869. I went through the Metapedia valley in 1870. In 1869 I knew the conformation of the country from the cross sections. I had not seen it. I prepared cross sections while the work was in progress. They were as correct as it were possible to make them. The completed cross sections represents the work as completed, except at Man's Hill and station 350. When the line was completed in 1876, I put these cross sections in a box with the other papers and sent them to Ottawa. I do not recollect adding the cross sections at Man's Hill for the washing. I lengthened the cross-sections at Man Hill to shew that the line was shifted into the 40 hill. These were the final cross sections. I left the cross sections at 350 as they were before. I gave O'Dell what assistance he required. I gave him the final cross sections and the profiles. He copied both. He asked me nothing about the percentage. The slope of the embankment was $1\frac{1}{2}$ to 1. The whole country is a little steeper than $1\frac{1}{2}$ to 1. Kane's Brook is the steepest place there. There was not much embankment between 258 and 268; the upper side had hardly any slope; there was no alteration of the line; in most cases the crib-wharfing there was shoved hard up against the natural



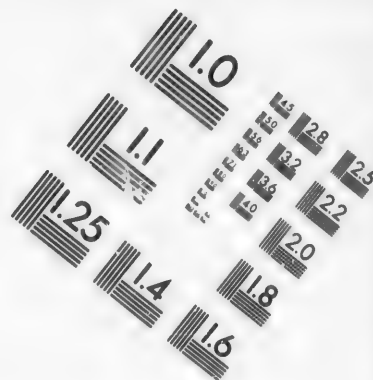
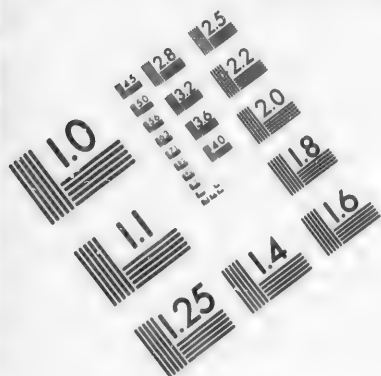
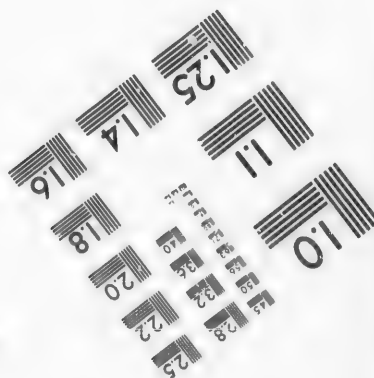
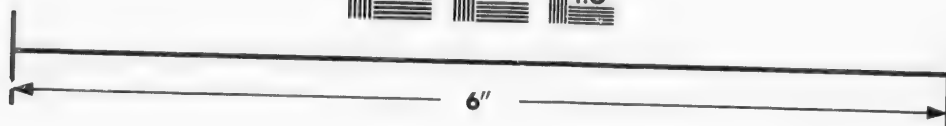
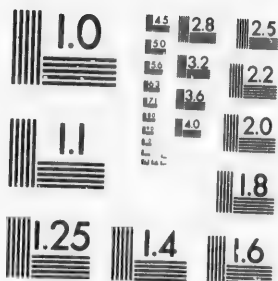


IMAGE EVALUATION TEST TARGET (MT-3)



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bank. I made the original drawing of plan R; it was photographed; plan R was used on the whole of the Restigouche district. There was no other plan used; that was made to give them an idea of the work done. The work was constructed according to the plan, except that the land tie was put in, in the top stick, on the plan marked A on plan. The top stick would have done an injury to the work; the bank settling on it would have tipped it up. I reported to Smith that placing the upper stick would do an injury, and he told me to leave it. There was no crib-wharfing finished with a top stick going into the embankment. The plan represents the back of the crib-wharfing as plumb. (This answer objected as the plan speaks for itself.) The crib-wharfing was frequently half its height before the bank became plumb, and therefore the lower 10 stick could not be thirty feet long. The bottom stick was not thirty feet long, nor the second one; three or four of them, according to the plan, would be fifteen feet long. The fourth one is about fourteen feet long. If the crib was twelve feet high it would give a superficial area of 180 feet, that is if it was built according to the plan. Plan R does not require any logs longer than fourteen feet. From the toe to a line parallel with the burm into the bed of the river would give a superficial area of ten feet more, increasing it to 190. To arrive at the mean area, add the actual areas together and divide by two. The area of some of the crib-wharfing was greater than A 180. Plan R is a correct representation of the worst of the biggest part of it. I do not think the crib-wharfing could be measured from the cross sections; it could be, assuming the 20 work to be plumb. The back of the crib-wharfing would be an intermediate line between the perpendicular back and the front line. I did not say that the prolongation of the embankment on the plan would be an intermediate line between the back and the front of the crib-wharfing. The back of the embankment was all imaginable slopes; I don't think any one could tell the average slope; I never told any one the average slope. I know that Bell made one calculation of the crib-wharfing with a slope of 1 to 1. I don't think I told Bell it averaged 1 to 1. I had a conversation with Bell in my office at Metapedia about the crib-wharfing, in relation to calculations; it was after the Exchequer Court and before the arbitration I knew of his making the calculations. He drew a line of a slope of 1 to 1 on the plan for the purpose of calculation; 30 he got orders to make three calculations. 150 or 160 superficial feet would be a fair average of the crib-wharfing on McDonald's contract. 177 would be the average on the whole section, as the work was originally intended. Assuming an area of 150 feet as the average area, I compute the crib wharfing between section 258x30 and 268x60, being 1020 lineal feet; 307 and 317x50, being 1050; and 300 and 304x90, being 490 feet, making in all 2560 lineal feet, to contain in all 14,222 cubic yards. The length in lineal feet above is the same as the length in my 66x interrogatory. The first above piece is at Kane's brook, the second is opposite the road diversion, and the third at McLean's brook. The three pieces represent fairly the crib-wharfing built and the calculations above given fully represent an area of the quantities. 40 I did not make my calculations in the above way, and 14,222 fairly represents the contents in those three pieces. 132 would have been too small an average to allow for McDonald's work. Allowing an area of 132, those three pieces would contain 12,740 cubic yards. Allowing an average of 150, the piece at McKiel 340, 355, 1500 feet would contain 8,333 cubic yards.

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A slope of 1 to 1 in the back would make an average area of 132, with the back plumb 192; the height is allowed to be 12 feet. The cross sections shew the conformation of the country as far as they go.

The lines marked A. in O.O., represent the surface of the ground, the slope of the country before any work was done. The heaviest piece of embankment between 259 and 269, I think 259x25, it would have been possible to have built the crib there with a perpendicular back. If there was more embankment between 259 and 269 than is shewn on the plan at d. in O.O., it would have been possible to have built all the crib-wharfing with a plumb back between those stations; this could have been done at level stations. In many places between 259 and 269 the formation of the country would not 10 admit of building the crib wharfing with a plumb back. After looking at the cross-sections, I repeat the above answer. The foot of the slope is not so steep as 1 to 1 between 259 and 269.

The slope of the country between 259 and 269 would go 5 to 1 where the embankment was placed; a crib with a plumb back all the way down could not be built there without excavating. Between 259 and 265, the bed of the river is level. I cannot say the year when I went on sec. 18; I think my duties commenced on sec. 18 in '72. I had in addition the Restigouche bridge to attend to; I had also the Mill Stream bridge on 18 to attend to. I did most of the office work; my first assistant on 19 was Corbit, he was there about a year. After him, Jillett, he was second-assistant when Corbit left. 20 He runs a steam boat now; he was not well up in mathematics when he came; he studied hard and got a good knowledge. Two years after he came he could calculate crib-wharfing as well as anyone; Jillett calculated the crib-wharfing some time and gave the calculations to me. I did not instruct Jillett, in calculating the crib-wharfing, to allow an area of 132 feet. I had no instruction from Marcus Smith to allow an area of 132 feet; it would have been too small in some places, and too big in others. I figured each piece separately; sometimes there were three areas in one hundred feet. In the winter of '70 I made plan, of which R is a copy, after I had passed through the section in the stage. I gave Innis a plan of the crib-wharfing. I knew of Alexander McDonald having one. There was no other plan of crib-wharfing on the line of 19 except this 30 one. I had a plan like this at the trial at Ottawa. I calculated each piece of crib-wharfing as it was done. I measured the crib-wharfing on the ground in Sept. '74 or '75. I did not measure the work on 19 in March '76. I made a final measurement of the work, each piece as it was done. The measurement in March '76 was made in the office; I worked something like three-months at it. I worked in the office at Metapedia. I think it was done before I went to Ottawa. Mitchell and Oakes finished up their work in the fall of '74. I remained there from '74 to the spring of '76. The shrinkage or sinkage was made on the bill of works. I think there is as much as 15 per cent. on the bill of works allowed for sinkage between 317 and 303, according to the paper-sheet O of bill of works. Between 289 and 277 the per- 40 centage allowed is 14 per cent.; between 275 and 237 the percentage is 15 per cent.; between 235 and 220 the percentage is 15 per cent.; between 220 and 317 x 30 the percentage is 15 per cent. I prepared the original bill of works. I had the test-pits to give me the data of the work. Between 162 and 380 I see no percentage less than 10 per cent. The average of the percentage was supposed to be 10 per cent. The greater portion of the earth-work on McDonald's work is between 220 and 217. I

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remember O'Dell coming to my office when he obtained the cross-sections and profile. I may have told him that the percentage to allow was from 10 to 15 per cent. The average between 12 and 15 would be 12½. The step-culverts were between 303 and 310. No step-culvert at Clarke's Brook. There was a step-culvert at Man's Hill, making three in all. The step-culverts could not be blasted. We had the same specification for 18 as 19. (Objected.)

APRIL 24.

At first I could tell that there would be rock in the foundations of the masonry structure; did not discover it till the culverts were laid out and cleaned out. If the work is of good quality, the correct way is to level it in steps to receive the 10 masonry. It is a delicate job for blasting. There was rock in the foundation at Clarke's Brook. There was rock in the bottom of the stepped-culverts. There was rock in the culvert at Man's Brook. It is easier to take the rock out by blasting than by chiselling or picking. I cannot put any figure as the cost of levelling the rock in the foundations. There would be a step every three feet of the culvert, where there was pumping. That would very much increase the price of levelling the foundations. Levelling the foundation in Clarke's Brook and pumping would be worth over \$100. Under-drains are 4 feet under the ground, with poles thrown in and stones over the poles. The drains were measured by lineal feet. Catch drains would average 1½ cubic yard to the lineal yard. These drains were far 20 away from the top of the slopes, and, therefore, we did not make the contractors toe the mark, if they had it would be two-third cubic yard to the lineal yard. I don't think there was any rock in the catch-water drains. Hand packing is taking the rock thrown out of a cart and putting it into a better shape. It would be more difficult to build rip-rap by hand-packing than merely by dumping the stone over. Dumping would be rip-rap as well as hand-packing. It was all hand-packed. In my certificate I did not carry out anything within the 2,000 feet haul for rip-rap, because there was no price for it in the agreement. The contractors were foolish to sign such an agreement, no price being allowed for hauling within 2,000 feet. After reading McDonald's agreement I separated the haul within and beyond 2,000 feet, in 30 accordance with the terms of that agreement. I had previously returned the whole in a bulk to the Ottawa Government. I don't see now why I put the within 2,000 haul in C 2. It was worth something to hand-pack, no matter where hauled from. The Metapedia freezes every winter. The current is strong—four miles an hour in a great many places. In consequence of the ice coming down the protection had to be good and strong. I allowed, and could not prevent, the contractors putting the rock from the rock excavation into the crib-wharfing. I could not prevent, because it was none of my business where they get it under the specifications. I knew of the rocks from the river going into the crib-wharfing and the rip-rap. The rip-rap at Clarke's Brook and Gilmore's was not returned in the final tabulated estimate for the contractor. It 40 was omitted by my mistake. Keefer rectified the mistake. Contractors above refer to Mitchell and Oakes. The rip-rap in some places was thicker than four feet. The sub-contractors built it so for their own convenience, having built the rip-rap before the embankment instead of after. I have seen a piece of rip-rap here and there put in before the embankment. The rip-rap on McDonald's contract was from two to five feet in height. Eight feet was the difference between the water in summer and spring freshets. The crib-wharfing and rip-rap would be from eighteen inches

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to two feet on that level. I had the original cross sections for making the figures for the bill of works. The bill of works is an approximate estimate of the earth, rock, masonry, and everything required to complete a contract. It was used for letting the work to contractors, and they tendered on that basis. [I took the haul from the bill of works and specifications. The work was carried on under my directions, on the principle of 1600 feet haul. A good deal of the crib-wharfing was built out into the river; mostly all, except the beginning and ending of each piece. The average depth of the river would be about a couple of feet for the length of McDonald's contract. Objected.] The bottom of the river was of every imaginable shape. When we got into the water, the bottom was flat. It was not intended that 10 a hole should be dug into the natural bank, for the land tie a top-stick. The toe of the embankment on the top of the wharfing was six feet from the top of the front of the crib-wharfing. One of the logs, as represented on plan R, is about 18 feet. I don't think there were any logs over 25 feet; diameter, 15 inches at big end, 6 in small end. I do not think there was any lot of cedar logs the average length of which was 30 feet and the diameter 18 in.; there might have been an occasional stick. If the logs had been there averaging 30 feet in length and 18 inches in diameter, I would have certified them; but I do not remember any such. 10,680 cubic yards represents the total rock-excavations of Archibald & Vosburg's work; it represents the final account when they left. If Archibald & Vosburg's total work was deducted 20 from the estimate put in for McDonald, he would not be getting credit for the half bunk used by him. There is nothing in C 2 showing that he got credit for it. I sent two copies of C 2 to Oakes; there was one addressed to McDonald and one to Oakes. I sent them both to Oakes. My signature is to the commission. The answer to the 12th interrogatory of my examination in this suit is not correctly taken down. I did not make the statement therein made that Exhibit B was made in duplicate, and that one copy was sent by me by mail to S. D. Oakes. I can't remember saying, in answer to the 12th interrogatory, "I don't remember what became of the other." It is possible the answer is taken down wrong. I did not state as in that answer. I did not send the paper to McDonald. I did know where he was. I forget who signed 30 C 2 first, Jillett or myself. I recollect nothing about a third copy of C 2. There were only two originals signed by me; they were both sent away to Oakes. If there was an office copy, I do not remember signing it. I seldom sign office copies. I keep an office copy of everything. The only conversation I had with Oakes and McDonald is the one I have previously detailed. I will not be positive as to where the conversation took place; it is too long ago. I suggested that McDonald and Oakes should enter into a writing to be bound by my measurements. The writing was not entered into. I told them it was useless to make the measurements unless they entered into a writing to be bound by it. McDonald did not refuse to enter into a writing. I saw the interrogatories and cross-interrogatories in 40 Ottawa before I gave my evidence. I saw them at Dogherty's office before I gave my evidence. Oakes attended all over section 19. Gordon had the eastern end of the contract. He had nothing to do between 162 and 380. I made a very approximate statement between 247 and 259 before the work was commenced or laid off on the ground for Mitchell and Oakes. I don't remember making any similar statement as regards 341 to 355x50; I was not asked so to do. I estimated the work from the profiles and cross sections. It is better to have the line on *terra firma* than crib-

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wharfing, or any artificial structure. If the country was flat it is not likely the road would go near the river. The required slope was taken down, as laid off by me, between 247 and 259. I estimated the quantity of earth in these slopes. I suppose the earth washed down by sluicing would go into the river and be washed away. I had calculated the force of water before McDonald entered on the sluicing. The trouble was that the gravel lodged at the bottom instead of going into the river. It would have cost thousands of dollars to have carted this earth away. I gave Mitchell and Oakes credit, as if the whole earth had been excavated. I did not give them credit for the crib-wharfing as originally laid down, they got credit for the piece actually built there. (Objected.) 12½ per cent. would be a large percentage. Percentage entirely dependent on the material worked. The length of the time of completing the contract would make no difference in percentage in the stony, gravelly country of this section. I wrote C 2 from our monthly memoranda book. I kept the account of the sub-contractor. Every figure in the book is mine. The earth excavation can be measured from the cross section, as also the rock. I measured on the ground the actual embankment. I kept a record of the measurements of borrow-pits in the office. I laid out the borrow-pits before the contractors were allowed to begin. I think I did this in every case. I made no actual measurement in the fall of '74. The final measurement was made in the spring of '76. We had the necessary measurements in the office in '76. We got a tabulated form made up so as to shew the quantities arising from the change of grade or location. I had fifty miles of railway to look after and that took up a large portion of my time, and, in consequence, I was three months making up the statements. It took me and Boligh three months steady work to make up a statement from the cross sections of the original quantities of the measurements of this section at Dalhousie, doing nothing else. This work included all that was necessary for an approximate estimate to prepare the bill of works by. It included the masonry. The rip-rap, the clearing, cutting, grubbing was shewn on the cross section. No masonry. The originals were made with considerable care. I computed the spoil and the borrowing. No necessity to be on the ground to compute the spoil and the borrowing. If there is no change in the alignment the work is built according to the original cross sections. 20
Jillett made the tracing of the profile that Mitchell has. The monthly memoranda book is bound like an account book. I gave evidence before the Exchequer Court at Ottawa. I won't say that I was longer than two months making the final estimate that I spoke of. Rip-rap is shewn in plan S, but not the rip-rap on the section 19. I had not the power, under clause 20 of the specification, to exact rip-rap of eight feet in thickness; it would not be rip-rap at all. The inspectors of rip-rap was Lowrey and Innis; they were both on the ground at the same time, and made weekly reports to me. I can't recollect at what stations the rip-rap was built. No Man's gulch was considerable of a stream. The paving was always put in well, where it was considered necessary so to do, in consequence of the rush through the streams. 40
There was very good paving at No Man's gulch. There was a stream at McLean's brook; it was a structure of no importance, and there was no necessity of the paving being extra good or exceeding the specification. We exceeded the specification at Kane's brook. The paving I described the first day as ideal is only to be found in Scotland; none in the world so good. I did not say at the Exchequer Court that I did not keep the measurements in books; I could not have said so; I said I got the

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monthly waste-paper or foolscap supplied us by the government; I may have said there was no record of the monthly measurements, because they were bulked, that is, made one lump sum as the work proceeded. I can come at the spoil by calculating shrinkage and knowing the stated length of haul. I may have said that \$720 was not extravagant for the culverts built on the sliding rock; the final measurement, I think, was made in '76. I measured the crib-wharfing from Jillett's report same time and from actual observation on the ground. Memo. is in my hand-writing, and is the memo. I referred to on Saturday. I must have volunteered the second statement therein between sections 341 and 355, because I was not asked to make those up. I did not intend to say that the slope of the crib-wharfing was, in all cases, $1\frac{1}{2}$ to 1, but only where that was the slope of the country, and that was in occasional spots. It is my impression that Mitchell was not present when Oaker and McDonald asked for the measurements.

Re-examined.—Longer logs would be required on a portion on the contract outside of McDonald contract at a place called Devil's hole. I was testifying before the arbitrator and the Exchequer Court on section 19 as a whole, and not in McDonald's contract alone. There were culverts outside of McDonald's contract that required to be stepped. The rip-rap at Clark's brook and Gilmore brook was left out of the final estimates sent to the government, but is included in C 2. Bill of works would be no criterion of the work actually done.

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On the application of Mr. RIGBY, Mr. GRAHAM consenting, it is agreed that the further hearing of this cause be adjourned to Monday, the 17th May, next, at 11, A.M.

MAY 18.

CHARLES GRAHAM.—Had a conversation with Alex. McDonald last fall, in the train from Truro, in reference to this claim. I told him he had put in a very large claim against Murray's estate; he said he did not expect that claim, but he did it as the best way to get back his property in Truro.

Cross-examined.—I had no more interest in the matter than the interest I had as a creditor of Murray's estate. I have no interest in having McDonald's claim as small as possible.

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MAY 18.

DONALD SUTHERLAND sworn.—Live at Shubenacadie; have had experience for 25 years on this side of the Atlantic; 15 on the other, as a contractor. I worked on the main line; three contracts, including 18 miles; 5 miles on Pictou branch and 27 miles on Intercolonial; worked on sec. 23. Tools in use a year would be deteriorated 75 per cent. The engineer in charge would be most capable to estimate the work done.

I have been a great number of times with engineers measuring work; engineers have always supervised and controlled my work. Q.—From your knowledge, tell me how long it would take an engineer to make an accurate estimate of the embankment and excavation of ten miles of railroad, where heavy work is to be done? (I decline to allow the question.) I knew the sec. 19 by the profile and plans; I tendered for the work; I was never on the ground. I recognize the profile, plan C, as a tracing of the plan of sec. 19. From looking at this plan, I say that it would take an engineer unacquainted with the ground 8 weeks to measure the work done on sec 19—that is the

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embankment and excavation. I was present this spring at a conversation between Alex. McDonald and Oakes, in Caledonia Hall. McDonald asked Oakes if he had a profile of the work; he said he thought he had, and that he would bring it to him after dinner; he brought it after dinner; I was again present. Oakes asked McDonald if the account he had rendered him was correct; McDonald said it was correct except one thing, and that was the tools, that he charged too much for tools. McDonald said he could have objected to Mitchell's salary, but he would not do it. McDonald and Oakes both had the account. McDonald brought the account there, and said the balance of \$11,000 on that account was correct. Oakes asked McDonald how he put in such a large account for earth work; he said he had to make out an account of some 10 kind for you fellows. This took place about end of February, 1880. Was present at another conversation at the same place. Mitchell and McDonald were there; Oakes was not there. They were talking about the work. McDonald said the property in Truro he gave to Murray was as security for supplies he was to furnish him with. This took place the end of March, 1880. About that time McDonald told me he thought he would have no difficulty in settling with Mitchell for a trifle, but he would not approach Oakes.

Cross-examined—Oakes produced the profile, as far as I could see. McDonald brought the account. Oakes did not show any account at that interview. I saw the account in McDonald's hand; I did not have it in my hand. I do not think that the 20 account annexed to the answer now shewn me is the account I saw with McDonald. I knew at that time that McDonald had a suit pending in court, and that he was claiming an account from the contractors.

I have given the whole of the conversation that took place at that time. I suppose McDonald wanted the profile for this trial, and wished to save the expense of sending to Ottawa for it. I judged the time, 8 weeks, required from a piece of my own work of 5 miles that it took a month to measure all the work on it; there were bridges and masonry on it, also culverts; no rip-rap work; not so heavy as McDonald's. The profile shews where the cuttings are as a general rule.

ROBERT P. MITCHELL—Am one of the firm of Mitchell & Oakes, contractors for 30 sec. No. 19. It would not give a correct estimate of the contents of the crib-wharfing between sec. 330 and 162, to assume the back to be plumb, because in a great many places the ground was not level, it would give more to calculate all the way down. The crib wharfing was not plumb in consequence of the land not being level at stations 247x75, 248, 249, 250. It was comparatively plumb between 250 and 251x90, a distance of between 75 and 80 feet. There is about 500 feet of crib-wharfing at these stations, of these 75 or 80 feet was plumb. I did not measure it on the ground, that is the length of it, and speak after looking at the cross sections. This is the lowest piece of crib-wharfing in McDonald's contract. It is at Man's hill. This is at the station where McDonald had the right to change the work. It was not built according to 40 the original plan, because the ground would not allow of it. The location was changed for the purpose of straightening the line. This crib-wharfing was rendered necessary in consequence of McDonald not building the road according to the change. He did not carry far enough in. He had to do rip rapping from 241 x 50 to 248 in consequence of not carrying the road in as required by the agreement. The next crib wharf-

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ing was from 259 to 269 x 50, = to 1000 feet. None of that is plumb work. From 305 to 317x90 none of the crib wharfing is plumb. From 329x75 and 349 it is partly crib-wharfing and partly rip-rap, partaking of the nature of both; none of this is plumb. From 339x50 to 355 the work was not plumb, except at three stations where it was nearly plumb; this last piece was done by McKiel. McKiel worked between stations 337 and 380; he did all the work except the masonry and the rip-rap. There is something still due McKiel. I did not employ him originally to do the work between those stations. I paid him payments on account of the work he did. McKiel was working under McDonald, but in what capacity I cannot state. During the progress of the work I was on the works all the time, except once or twice. I was away 10 not over fourteen days at a time. I superintended the work done by McDonald as well as my own. I had 25 or 26 years experience as a railroad contractor; part of the time in United States, part in Canada. I saw the crib-wharfing on McDonald's section when it was being built. I walked over and examined it. The average height was a little less than 12 feet. I measured it. The evidence given as to the length of the logs in the crib-wharfing was not correct. When the crib-wharfing was plumb the length of the sticks would have to be 30 feet, and was that length or near to it. The logs in the bottom tier, where the bank was not plumb, was as short in places as 12 feet. None of the crib-wharfing was as high as 18 feet. I know the paving that was done by McDonald for which he claims to be paid. I did a good deal of the work myself that 20 McDonald had originally contracted for. The paving was made by taking the stones that were left and laying them on their edge in the paving; it was groited in some places, in others not. No cement put in except in the form of groiting. Where the force of water was not great, groiting was not used. The paving was not as valuable as second class masonry. Paving is worth \$3 a cubic yard. I have done it on all my contracts and never got more, except at the culvert at Man's Hill. The culverts were excavated to the rock, the rock was levelled out and the masonry set on it. I don't think that McDonald would have been allowed to do it in any other way. The \$600 charged by McDonald for blowing out culverts and stepping was a ridiculous price, \$50 or \$60 would be a fair price for the work he did; outside of the Restigouche Bridge 30 and the culvert at Man's Hill there was not outside of twenty yards of stone excavation. I remember only two culverts outside the one at Man's Hill, at which there was stepping done. Pumping is generally required in foundation. I saw the rip-rap while it was being built; it was not built according to the plan produced on this trial by McDonald; he had laid the face of it outside about 1 foot or 18 in. thick; it was filled in behind with loose stone for another 18 in., it was about 3 feet thick, not 8 or 9; the conglomeration of crib-wharfing and rip-rap between 329 x 30 and 334 would be about 4 feet 6 inches thick.

MAY 19th

The material in the cut between 331 and 337 would have gone into 40 the embankment at 350, but was not enough; but there would be plenty material for the embankment between 327 and 339. It was not necessary, except in some places, to borrow or haul rock 2,000 feet for the rip-rap built by McDonald. It would have been necessary to borrow or haul 2,000 ft. at the conglomeration piece between 329 x 50 and 334, but he got the rock for that rip-rap out of the river, a distance of 300 feet, and from the cuttings that were sluiced; all the rest of

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rock for the other rip-rap he could have got without borrowing and within the 2,000 feet. He used the rock in the embankment and crib-wharfing instead of the rip-rap, and got the stone for the rip-rap on the river near at hand, by this means he would have got paid twice. Agreement C C was not signed in blank by McDonald, and filled up afterwards. Murray had stopped McDonald's credit, and he was in consequence unable to go on; he brought out McDonald's account with him to Metapedia, and wanted me to assume the account; I refused to assume the account, but agreed to take the work off Mr. McDonald's hands. Agreement C C was the output of that arrangement; it was signed by McDonald after it was written, and after I had executed it. (Agreement C C is tendered and received subject to objection.) 10

I completed McDonald's work under agreement. After agreement C C was executed, the contractors (not McDonald) drew the money. The monthly warrants were more than sufficient to pay the monthly work. In consequence of the agreement I had extra work to do, which took me nearly a year. I charged \$1,000 for such extra work, and boarded myself; it was not half enough. Boggs and Murray held the contract in trust for Mitchell and Oakes; these latter were to get the profits; Boggs and Murray were to get \$8,000 for the use of their name. (Objected.) This arrangement continued until C C was executed. I do not know whether McDonald knew of the arrangement between Mitchell and Oakes and Boggs and Murray. Boggs and Murray knew of the arrangement C C. I used some of McDonald's tools 20 in finishing the work; the rest I bought; I allowed McDonald for the estimated value of the tools when I took the work over. I charged him 5 per cent. on the value of the work done for the use of the tools I bought to finish his work; the charge is too small. In tendering for contracts we always allow 10 per cent. for depreciation of tools on the value of the work. The rip-rap done by me was done under agreement C C; packing stones round culverts comes under the designation of rip-rap; the stone that was left from the structures would do. I did most of the packing at Clarke's brook under C C. McDonald's statement that the stone used for packing at Clarke's brook was hauled 2 miles, not correct. McDonald had a quarry up Clarke's brook $\frac{1}{4}$ mile away, and one on line about $1\frac{1}{2}$ away. Some of the stones from the quarry on the line 30 was used for rip-rap. There was no occasion to use it as stone could have been got from the river. There was a rock-cutting at 300. There was enough stone in it to do twice the amount of all the rip-rap. In some places the crib-wharfing was done ahead of the embankment; some places after. The catch-water drains were from one to four feet deep, according to the unevenness of the ground. I never agreed that the pencil memo. given by Grant was a correct statement. It was only intended to be an approximate statement, showing the probable amount of work supposed to be required before the change of the location. It was agreed between us that Grant & Jillet should measure the work, which should be the settlement between McDonald and us, and we were both to sign an agreement to be bound by it. This took place in my store. Oakes, 40 McDonald and Grant then started to go to Grant's office. I did not go in. O'Dell afterwards went over the line with me. I know that he had, the previous fall, measured the rip-rap and crib-wharfing for McDonald. I never agreed to be bound by his measurements. I was not with them when O'Dell measured in the fall, I was laid up with a broken leg. I don't know whether he opened the crib-wharfing and rip-rap; I knew after the second measurement that he had not done so. O'Dell measured the work for me. Whole of section 19 in five days. He started at Clarke's

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Brook and measured the cuttings; did not touch the embankments. He gave evidence at the Exchequer Court on his return. I went to him to get a statement on which to settle with McDonald. He had all the plans connected with the masonry on McDonald's work, with the exception of Clarke's Brook bridge. He had all the cross-sections and the profile. The contract between McDonald, Mitchell and Oakes and the contract between Boggs & Co. and the Government. He gave me the statement A 1 and B 1 to settle with McDonald by. Afterwards I went to him and told him I had lost the paper he gave me before and asked him for another statement, when he gave me E 1. I had not lost A 1 or B 1 when he gave me E 1. He told me that there was about 4,000 cubic yards of the 6119 put down for miscellaneous work that was calculated from the borrow-pits that went into the embankment, and that I settled with McDonald on that calculation. I could deduct the 4,000, but that for the purpose of getting a settlement it would be as well to allow it. He said to me that I could settle with McDonald by paper B 1, that he could not allow him any more; that if he got paid by that paper it would be all right. He told me McDonald was not entitled to be paid for the rip-rap, but that I should allow him something for the hand-packing. The quantity of excavation in B 1 is made up from the quantities in A 1. It is possible to make up the quantities from B 1 and A 1, the statement to the contrary by O'Dell is incorrect. (Mr. RIGBY tenders A 1, B 1 and E 1 and received, subject to objections.) 12½ per cent. on that work was not a proper charge for shrinkage, because it is mostly all gravel. I know Charles Parmiter. He told me when he was here giving evidence there were only two stringers at the back of the crib-wharfing, and that from the upper of these the batter was the same in back as front; and the longest tie was 16, and the shortest 12 feet. This was at the Farmer's hotel. I had a conversation with McDonald in Truro after this work was done, in presence of Oakes. We were talking of settling, and McDonald said if we could get him his property back he would give us \$1,000. I was present at Caledonia Hall when Sutherland was present. McDonald grumbled that Murray had not supplied him as he ought to have done, and that he had not backed him as he had agreed to do. I said McDonald, give the devil his due, you got \$16,000 worth of goods from him. McDonald agreed with me that Murray had done well. McDonald acknowledged our account to be correct, with the exception of the 5 per cent. on the tools, and that if he paid us \$6,000 that was in the account he could not pay Murray, as he did not want to pay it twice. McDonald said there was a balance of \$11,000 or \$12,000 due us over and above Grant's measurement. In consequence of a misunderstanding between McKiel and McDonald, McDonald agreed to relinquish McKiel's contract to me, and I was to settle with McKiel. McKiel completed contract under me. After this arrangement I found that my bookkeeper had allowed McDonald \$1,900 for the percentage out of McKiel's that should not have been allowed.

Cross-examined.—There was rip-rapping 241x75 to 248; it was necessary because McDonald had not run the line far enough back. There was a change of line projected between 247 and 259. I don't remember whether rip-rap was shown on the original cross section between 241x75 and 268. The change of the alignment was not confined between 247 and 259. In speaking of the change I have spoken of it as limited between these two stations. I cannot tell how far done from 247 it would be before the line as actually built would come within two feet of the line as projected. The depth of the rip-rap at the base was 3 ft. Some of the rip-rap was partly built before the embank-

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ments were finished. Some of the rip-rap was completely built before the embankment. The rip-rap would be about three feet high ; it had a batter of $\frac{1}{2}$ to 1-2 feet thick at top. Some of rip-rap might be higher, but none of it thicker than 3 feet. O'Dell has the height accurately. By the term depth, I mean the thickness from back to front at the base. Rip-rap pretty much all over my contracts. I think that stepping the culverts would be more expensive than blasting and building with masonry. The crib-wharfing that was carried away was at Man's hill, between 248 and 253 ; it was partially carried away : some of the bottom logs and stone were left. I claimed against the Government for the crib-wharfing that was carried away. McDonald built it. I attributed the loss of the crib-wharfing to the fact that the line was shoved into the river, and this narrow- 10
ed the river ; this was between 248 and 254. I also said that the work should be removed from the opposite side of the river so as to widen the river. Crib-wharfing not completed when carried away. I might have said that it was finished before being carried away, but do not remember having done so. The only directions we had as to building crib-wharfing were the stakes driven down. Grant furnished me with a plan and written specifications. The crib-wharfing was built according to a plan furnished by Grant, as far as was practicable. I don't remember whether I contended before the arbitrator at Ottawa, that I was to be paid for all the projecting timber under the embankment. A small portion of McDonald's crib-wharfing built with a land tie projecting into the bank. There was first-class masonry in the culverts at Clarke's brook, 20
Gilmore's brook, No Man's gulch ; these are all I can remember. There was also first-class masonry in the culvert at station 235-259 ; this was as projected at time contract was made with McDonald. I was about a year finishing McDonald's contract after C C was executed. I finished under C C work to the value of about \$17,000. I can't say without looking at my books, whether McDonald is charged with the price of tools used in finishing the work. Some of the tools I used, other than these I got from McDonald, I think were tools of mine that had been in use before. I won't state this positively. The horses and carts taken over when C C was executed were taken at McDonald's valuation. Can't say whether I charged him for the use of them. I think I did the whole of the packing at Clarke's brook ; a very small proportion of the rock 30
was got from the quarry ; on the line cutting I used condemned stone brought from the quarry brook ; in the rip-rap some stone may have been brought from there specially for the rip-rap.

MAY 20.

I have charged tools in my account to McDonald after C C was executed ; I think it is likely McDonald may have purchased tools from us before C C ; he got some from us after the execution of C C. I have not charged him with tools I used in the work ; the tools charged to McDonald are tools he got for another purpose ; I only remember of him getting them twice ; he asked me for the tools for McGreevy ; I don't remember the times, but it was while I was carrying on the work. The number of 40
tools I got from McDonald was very limited ; some of them worn out. I speak on this matter from my memory ; I can find no book or memo. relating thereto. I cannot find the book I spoke of yesterday. I do not know who directed Archibald, the bookkeeper, to make the entries in the books relative to the articles in C C. I directed Archibald to make the charge of 5 per cent. on tools after the work was finished. I charged 5 per cent. on the tools because they were partly worn out. I call tools,

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hammers, pick-axes, axes, crow-bars, drills, shovels, plugs and feathers. Agreement C C was signed in duplicate, with copies signed at the same time; I don't know what was done with the other copy; my impression is that McDonald got it. I do not know the date of the interview at Metapedia relative to the measurement; it was shortly after the work was finished; the conversation commenced in my store; Grant, Jillett Oakes, McDonald and self were present; Grant refused to measure the work unless we entered into a written agreement to be bound by his measurements; we agreed to it but McDonald left, and did not sign any document. I can't say whether a paper corresponding to A 1 was used at Ottawa or not; it may have been. I will not swear that a duplicate of A 1 was not used. I got E 1 from O'Dell to settle with McDonald by; I got it over a year ago. I don't remember what work was done from January '74 to the close of the work in the autumn of '74. I cannot tell if any work was done in January, February, March, or April '74; I won't say positively that any work was done in May, June, or July; I can't give any idea of what work was done in any month; can't give any account of the relative amount of work done in '73 and '74. Grant's measurements do not give in some places what I am entitled to; in others, I think, more; this has no reference to McDonald's contract; I never said, in reference to the whole work, that Grant's measurements were incorrect, and I would get O'Dell to measure it over again. I may have said that Grant's measurements were no good and that I would get O'Dell to measure it; but this was in reference to the whole work. I can't say whether I said in the presence of John Fisher and Dan Gunn at Truro, in the Reform Club hall, in the spring of '77, that I intended to pay McDonald by O'Dell's measurement; I do not remember saying the same thing to Waters in the spring of '74. I paid Parimeter after C C, by McDonald's order, money for work he had previously done for McDonald; and I also paid him for the work he had done for me; both of these sums were charged to McDonald.

Re examined.—I never saw any statement from O'Dell by which I could settle with McDonald but B 1, nor any statement having so large an amount as the one produced by O'Dell on his examination.

MAY 21st. 30

Ledger B, Mitchell & Oakes', account of Alexander McDonald & Co. and McKenzie, McDonald & Co., tendered and received. Also Ledger C of the same firm and the same accounts.

Also, Ledger Thomas Boggs & Co., containing the same accounts. (Marked D, J. W. J.)

S. D. OAKES. One of firm of Mitchell & Oakes. Commenced operations on section 19 in 1870, and before we got the assignment of Tuck's contract from the Government. Thomas Boggs & Co. had no interest in the contract; they were securities in the first instance and then took the contract in trust for us. This arrangement continued until the arrangement to take over McKiel's contract.—(Objected.) Spent the whole time on the contract, except about three months out of the year. I boarded about two and a half miles from the N. B. end of the contract, going towards Metapedia. I saw the crib-wharfing while it was being done by Alexander McDonald, and I knew how all of it was built. To measure the work as if it all had a plump back would give a larger than the actual quantity. There were two places in McDonald's work where the

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back was nearly plumb, in the other places it was not plumb at all. The length of the logs the first, second and third tier running into the bank were 6 to 18 and 24 feet, as suited the bank. I know the paving; I saw it when being built. The stone used was the refuse from the quarries that would not make building stone. I never saw any of it laid in cement. The top was groited. I have, since then, done paving myself. The work done by McDonald was, at that time, worth three dollars a cubic yard; it is not worth so much now. I saw the different pieces of rip rap as they were being built by McDonald. I saw none built like that shown in plan in S. The bottom of the rip-rap would be about three feet at the bottom and come up with a slope of two to one, and was about two feet at the top. He got the stone some from the river and some 10 from the cuts. I know of the work done by the first company, of which McDonald was a partner. There is nothing due that company; I settled with them according to Grant's measurements. The \$17,773.74 charged in my account is the sum paid them to balance their claims. I paid McKiel according to Grant's measurements. I settled with him. I know of no arrangement made with McKiel that was made with Mitchell. I know of the agreement being signed in reference to McKiel. C C was executed in our office; I saw McDonald and Mitchell sign it; it was written before it was signed; it was written by Archibald. I saw the final certificate given by Peter Grant; the same that is annexed to the commission. McDonald, Mitchell, Jillett and self were at my shop; we agreed to have the work measured up; McDonald, Jillett, Mitchell and self 20 went to the engineer's office. McDonald and I went into Grant's office; can't say whether Mitchell went in or not; McDonald and I told Grant we wished him to make a final measurement. Jillett and Grant agreed to make a final measurement, and I put the contract in their hands. They made the final measurements. I afterwards received certificates from Grant when I was in Halifax. I received two. I gave McDonald one at either the Acadian Hotel or at Davis' (McDonald's former partner). This might have been 14 days or 3 weeks after I got them. It was before these proceedings were instituted. On its receipt McDonald objected he ought to receive more for the crib-wharfing; he objected to nothing else.

Davis was one of the contractors under the second contract; he told me he estimated the whole work under the two contracts at \$80,000—(Objected). 30

I have no recollection of making any arrangements to pay \$600 for stones supplied McDonald as stated by McDonald in his cross-examination. McDonald had about \$2,000 of materials—horses, waggons, &c., at the time we took the work off his hands; he sold them to us, and we gave him credit for \$2,008; he was in debt, and he wanted us to take this stuff so the sheriff would not seize them; we used the horses, materials, &c., in finishing the work on McDonald's contract, then sold the material, &c., and charged him with the loss. The reason we took the material over was because we were finishing the contract for McDonald's benefit. At the time we took the materials over we arranged that after the work was done we would do the best we could with them 40 for his benefit. We charged him nothing for using anything, except the tools we found ourselves after we took the work. Mitchell superintended the work, and we charged \$1000 for his services; it was a low charge, not half what it was worth. I had a conversation with McDonald in Truro, at the time of the last exhibition I think, in which he offered us \$1000 if we would get the judg-

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ment out of Murray's hands, and would cry quits, I had a conversation with him in Halifax in reference to his account, he wanted to borrow my profile plan. I asked him if there was anything wrong in our account, and if it was necessary for me to send for our book-keeper, who was in Winnipeg, he said he would dispute one item and that was 5 per cent on tools. I told him I would bring the profile down with me after dinner, and asked him to bring the last account we rendered him; he brought it and said he might object to Mitchell for superintendent, but would not do so. He took away the account. The account marked B. B. B. is here admitted to be a copy of the account proved by McDonald, to have the same effect as if it had been the original. It told him he would have pretty hard work to make out 259,078 of earth, he said he 10 would have to put in something to match us fellows. In a conversation with McDonald last year, he told me that O'Dell did not allow him for as much earth as Grant had done. I never saw a statement from O'Dell giving as large a quantity of earth as P. P., nor as large a quantity as in Q. Q.

Cross-examined.— I have not heard or read over any of the evidence given in this case. I don't know what any of the witnesses swore to. I did not talk to Mitchell about the measurements. I only gave McDonald one paper concerning Grant's measurements. I won't swear that the paper now marked C. C. C. is the paper I gave McDonald. I do not know the hand-writing of C. C. C. C. C. was written out and signed at the time the agreement was made, and before I paid any money out for McDonald. It was 20 signed either at or after the 1st October, 1873, and not before. Nothing was done under agreement until it was signed. I never commenced charging McDonald with the work and crediting him with the warrants until about the 1st Oct. The signatures were not put to the paper in June, July or August, and the agreement not filled in until 1st Oct. I think the names were affixed to C. C. before any expenditure to any amount was made on McDonald's behalf. Murray was at Metapedia frequently; he might have been there August, 1873. Jillett went into Grant's office when we went to arrange about the final measurements. Either Grant or Jillett said there ought to be a written document. This was in his office. Grant was either in his office or the yard when we got there. We looked him up. I attended more to the eastern end of the line than the western. I did not 30 give any evidence at Ottawa as to the work on McDonald end of the contract. I heard McDonald's evidence at Ottawa. (Obj'd.) I gave no evidence respecting the crib-wharfing on McDonald contract. I furnished Alexander McKenzie, premier, with a copy of the lump quantities of the whole section 19. I think there was a paper showing the materials, &c., that made up the \$2,000; I don't know where that paper is; I can't say when I had it last. Archibald was our bookkeeper from the first, and while Alexander McDonald & Co were doing the work he rendered them monthly accounts in which they were credited with the work and charged with the advances. No settlement made with Alexander McDonald & Co. in writing to my knowledge. I think McDonald had 4 horses; can't say how many, or if any carts; he had one waggon. I can't say whether 40 McDonald was charged with the work done by his horses or not; McDonald's four horses might have been some days used on my end of the contract; I can't tell whether they were used on my end of the contract after March '74. I don't believe I charged McDonald with the hay and oats his four horses eat while in my possession; I can't tell whether I charged him with the shoeing of their horses. There was one set of harness.

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I don't know the value of the horses. I was paying between \$4 and \$5 a day for a pair of horses team. I had one railway contract before this in connection with Richmond depot. The conversation in Truro took place either on the station or in front of the Parker House. There is about \$60 or \$70 worth of tools charged to McDonald; can't say on how many different occasions; over ten charges. There was work done on McDonald's contract from June 24th. The reason that McDonald is not credited with the monthly warrants from January '74, to the close of the work, is because it was broken work, and we waited until the final measurements were made. Books kept under my directions and seen by me most every day. Archibald made up McDonald's final account under my directions. The items of wear of tools was, I think, entered in the books in Halifax. I authorized Archibald to make the accounts of Alexander McDonald & Co; we settled with them under Grant's measurements. McKiel was a sub-contractor of us after B B was executed. I charged McDonald with McKiel's work, because we credited him with the final estimates. I can't tell from the profile handed me where the rip-rap and crib-wharfing are; I can tell from the profile I have. The profile shown me is not a true plan. Looking at my profile, I say the crib wharfing from stations 248 to 252, and from 260 to 270. McDonald did four pieces of crib-wharfing including McKiel's, and also the piece at Man's hill, together five.

MAY 22.

If Boggs & Murray charged the \$621.55 to McDonald, Mitchell & Oakes, they should not charge it. There is an item of \$621.55 charged against McDonald in Ledger B, p. 360. The amount of the award received from the Government was upwards of \$100,000; this was over and above the lump sum—(Objected).

When I settled with McDonald, he owed certain parties in Halifax; I gave McDonald an order on Murray, so that these parties could get their money. All that I know about it is that the \$621.55 is charged in my books. We have credited McKiel with 20 cubic yards for the earth-excavation and 85 cubic yards for the crib-wharfing. McKiel got goods and cash on account as the work progressed. It appears by our books that he got in all \$6,152.16. The C. S. A. in pencil, on p. 406, is in the handwriting of Archibald. When I got settled with McKiel after getting Grant's measurement, I paid him \$12,700; this last item does not appear in the books, and I have not now any memo to show it. Can't tell whether the charges for work and warrants credited in Fol. 264, ledger C, was under the agreement contained in C C. I do not know that the difference between 20 and 23 cents on the earth, was to go to McDonald. McDonald, McKiel, and Mitchell made whatever bargain there was.

JOHN R. MURRAY, one of the late firm of Boggs & Murray.—I have charged in my account with McDonald, under the agreement made with them. I produce a statement shewing the debit and credit of \$116.24 and \$228.45; shewing how those items are made up. Statement received, marked D D D. I have charged interest, 27s. on \$11,575.62, to July 30, '75, = \$1,620.60. This is the interest on the bal. of the account. I charged McKenzie, McDonald & Co. with \$621.55 by arrangement with McDonald; goods supplied J. F. McDonald & Co.; and at the same time I assumed a debt due by J. F. McDonald & Co. to C. Graham & Co., \$1,690.55. Alex. McDonald was a member of J. F. McDonald & Co.

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Cross-examined.—The paper CCC is in my handwriting ; I made it from another paper I presumed to be an original. I did not have C 2 or D 2 annexed to the original commission before me when I copied C C C. C C C is a verbatim copy from the paper I had to copy from, inclusive of, the words McKenzie, McDonald & Co., second line from bottom. The agreement between Boggs & Co. and Mitchell & Oakes, as to Boggs & Co.'s interest in the contract was in writing. McDonald agreed to pay interest according to our usual terms : which was three months' credit on goods and interest after that date. In addition, I charged him 5 per cent commission on goods purchased outside, and not on goods furnished out of my store. I drew from the Government under the whole contract, exclusive of the Restigouche Bridge, between \$200,000 and 10 \$300,000.

The admission agreed upon in reference to the accounts are stated in the papers marked Z Z, J W J.

Contestants rest.

MR. RIGBY tenders C. C. C., J. W. J. It is received.

IN THE INSOLVENT COURT.

In re. Murray.—Contestation of claim of Alexander McDonald.

IN REBUTTAL.

MAY 31.

JOHN R. FISHER.—Live in Truro, Am travelling agent. Had a conversation ?0 with Mitchell at Truro in the Reform Club room, at the railway station and on Inglis street. Mitchell told me, I think in the Reform Club room, that Grant's measurement was wrong, that he had given in too little, and that they were going to get another engineer and have the work measured over—that they were going to get O'Dell. He afterwards told me that he had O'Dell, and that they had measured the work, and that O'Dell had given him quite a large sum—he mentioned the quantities but I have forgotten them. He said they had got a correct measurement, and that they were going to get their money. (Objected.) Remember when Mitchell returned from Ottawa in 1879. Met him in Stewart's store on Inglis street shortly after he returned. I asked him if Alexander McDonald had a claim, he said yes, that he could never get ed up with 30 him until they got a correct measurement ; that they had got a correct measurement from O'Dell, and they would have a settlement before McDonald could get his money. (Objected.) Mitchell told me that after he got the measurement on O'Dell's character and standing that they could not keep him out of his money. This last statement was made after the measurement by O'Dell. (Objected.)

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WILLIAM WATTERS.—I was on section 19 during its construction; I was there as a labouringman and as foreman; I have had conversations with Mitchell about the measurement of the work in '74; I heard him say that they had been wronged in their measurement by Grant; that they were going to have the work re-measured, and sue the Government for extras. After O'Dell had measured the work for McDonald, I heard Mitchell say that McDonald had measured his work, and had made a good thing by so doing. Mitchell said that Grant was trying to ruin them and break the work; that he was trying to rob them. Mitchell said he was going to get the whole section measured by an engineer. I had a conversation with Mitchell after the work was re-measured; he said they had measured the whole section, and had made a good thing of 10 it; that the remeasure had established that Grant's measurements were wrong. Mitchell said Jillett did not understand measuring work; he said McDonald would get something good in consequence of that measurement. Mitchell and Oakes were all on the section 19 during McDonald's contract. No one interfered with McDonald so long as he did his work right, except the inspectors and engineers. I am now speaking of Oakes as well as others.

Cross-examined.—The first conversation I have detailed was in Mitchell's own house, Metapedia. The work was about being done when the first conversation was had with Mitchell; I was not drunk, I was sober enough to remember; it would surprise you if you knew how many drunks I had; the conversation between 5 o'clock, 20 p. m., and 4 a. m. I had two drinks of Scotch whiskey this morning but am quite sober.

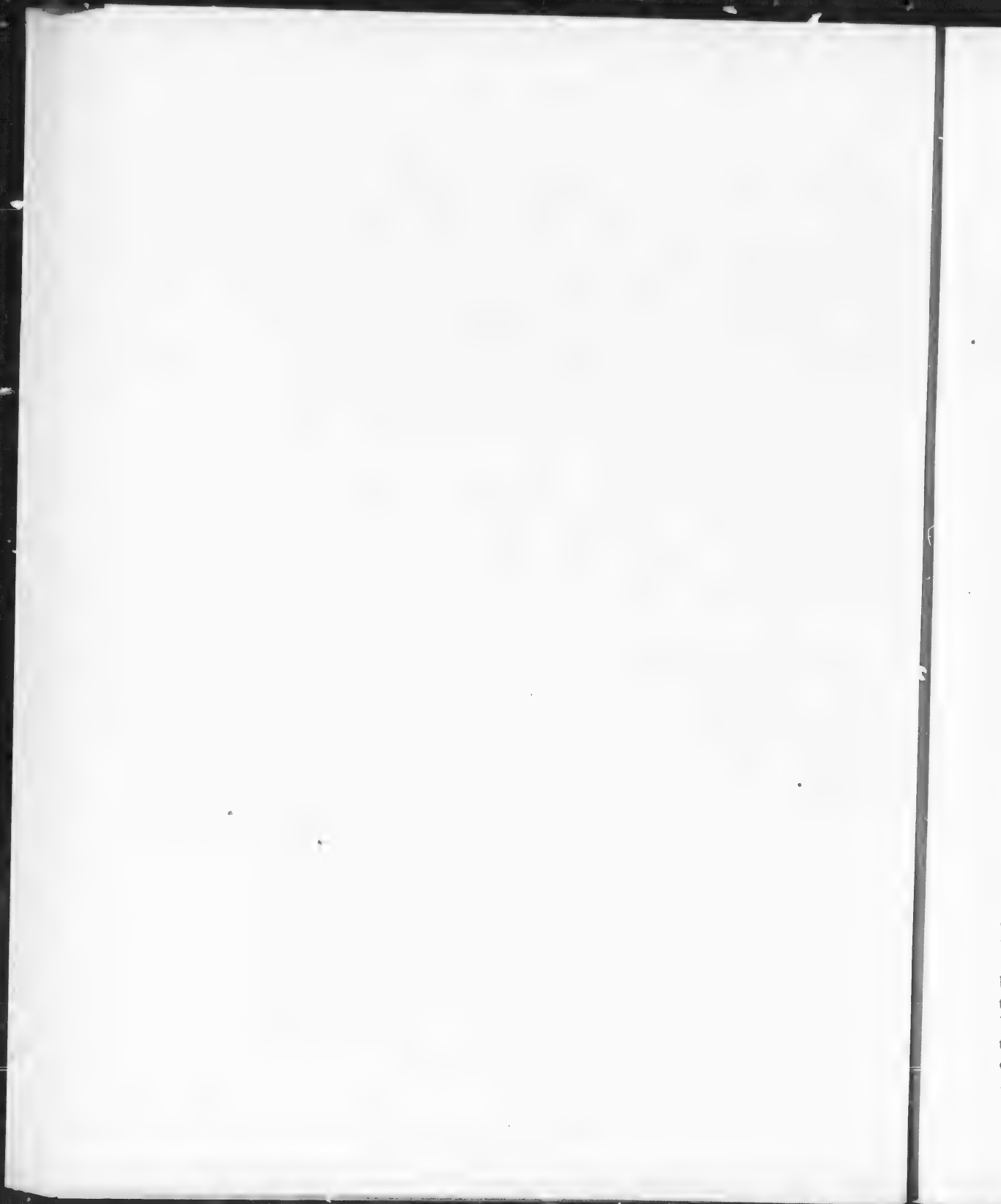
Re-examined.—The conversation I detailed took place somewhere about p. m.

MR. GRAHAM tenders Bond of Tuck to contradict statement of Oakes as to Thomas Boggs & Co. being security on the contract. I deem the evidence irrelevant, and therefore not the subject of contradiction; but its reception being pressed, I received it subject to RIGBY's objection, and mark it E E E

Mitchell and Oakes' ledger C, containing McKeil's account, tendered, containing a pencil memo., tendered in order to put the memo. in evidence. (Mr. RIGBY objects to its reception.)

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ALEXANDER McDONALD.—I got C. C. C. from Oakes; he gave me the paper when I was in trouble in the winter; it was when I was in litigation with Murray. Oakes never gave me an original paper signed by Grant and Jillett. I never had any other paper from him, except the paper I now hold in my hand (C. C. C.) I never agreed to be bound by Grant's measurement. There were several months that I got no measurements. Grant told me there was a big per centage kept back. (Objected.) I asked Grant for my measurements; he told me he would give me the measurements if I would sign writing to be bound by them. I refused to sign, and said I did not want his measurements unless I got them without signing. I had no confidence in Grant's measurements. (Objected.) I had four houses, two stone wag-gons, two sets double harness, about six carts and about six rock sleds, two double sleds for hauling rocks. After C. C. was signed I went on with the work as usual. Only Mitchell and Oakes paid the men. I superintended the work as usual. The expenses of carrying on the work were charged to me in the books. Mitchell and



Oakes charged me for every day the horses worked on my work. No arrangement that horses to be sold at end of work, and that I was to be charged with the difference. I had a heavy force of men on October 1st, 1873. About half I had on in August and September, 1873. I had about 100 men in August and September. They were supplied with plenty of tools. The new tools I used after that I bought from Mitchell & Oakes. I had plenty of tools with what I bought without using any of Mitchell & Oakes' from their contract; they took some of my tools to the other end of the contract. Horses worked on Mitchell & Oakes' end of the contract when not working on my contract.

The charge of 5 per cent. for tools is unreasonable. I would have to pay the per 10 cents and for the tools as well. \$840.83 of tools would do three times the work done between the 1st October and the close of the work. The closing up work not hard on tools. The heft of the work was crib-wharfing and masonry, not requiring tools. I never sold tools to Mr. McCreedy; he never got any from me. The tools purchased from Mitchell & Oakes were used on my work. Mitchell & Oakes sold them after the work was done for their own benefit, same as they have charged per centage on. I am not credited with the tools. Mitchell and I arranged the price at which the horses, tools, etc., were to be taken over. In the settlement with Alex. McDonald & Co., the company was charged with \$621.55; and John R. Murray has charged me with the same sum. We arranged when we signed the accounts that 20 Mitchell & Oakes were to pay Murray the \$621.55. I was not a member of the firm of John F. McDonald & Co. I understood from Murray, Mitchell and Oakes, that Murray had a one-third interest in the contract at the time they signed the contract. (Objected.) Mitchell and Oakes never told me and I never knew till three minutes ago that Murray had not a full interest in the contract. I never offered Mitchell & Oakes, in conversation with them, \$1000 if they would get the judgment of Murray released, and cry quits. They always admitted there was money due me after the measurements. The suit at the time was pending for \$20,000. Mitchell & Oakes wanted me to wait until they got settled before claiming on them. When I arranged with Murray to supply me, nothing said about interest; I 30 was to give him 5 per cent. on the amount of goods he was buying for me outside his shop. I complained to him about the interest after account rendered; I told him he did agree to change it; he said it did not make much difference, that whenever got settled he would take it off, or it could be allowed on both sides of the account. I never admitted to any one that Grant's measurements were correct. I told O'Dell to measure to show Grant's measurements wrong.

Cross-examined.—The suit I refer to with Murray was the suit in Equity. He commenced bothering about the measurement, and said he had Grant's measurements. I said I did not care whether he had them or not, I would not believe them. He gave me what he called Grant's paper. I said at first he gave me Grant's paper, 40 but I correct myself; I knew the paper was in Grant's handwriting; I believed it to be a copy; Oakes told me so. I don't recollect whether I asked to see the original. When Oakes gave the paper he told me the measurements were not correct. This was after the commencement of the suit in Equity. I did not say paper CCC handed me was a copy, except that Oakes told me so. I knew it was not Grant's handwriting. No tools used after contract taken over, except the tools I had in use, and those I bought. I was

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afraid that my creditors would seize the tools, and that was the reason of the arrangement. All the tools, horses and plant transferred to Mitchell & Oakes when they took over the contract. (Objected.) Before Murray signed the contract, Mitchell & Oakes told me that Murray had one-third of the contract, and Murray told me the same when I signed the contract. Murray & Boggs signed the first contract last. Murray told me after he had signed the contract of Alex. McDonald & Co. and before he signed the contract of McKensie, McDonald & Co.

Re-examined.—I got C C C in '75. I had litigation with Murray previous to the Equity suit.

JAMES O'DELL.—I was engaged in making the measurements in the field 8 days. 10 I was a week at work at Metapedia. Office work in connection with the measurements. I also worked in Nova Scotia making up calculations. (Objected.) I was occupied in all about 76 days. I worked on the ground and at office work, Metapedia, about 11 hours a day. I confined myself to the earthwork and rocks. These measurements were made for Mitchell, and does not include work done for McDonald. I was writing at the calculations 14 hours; 8 hours is a professional day's work. I gave my evidence in Ottawa from A 1.—(Objected.) I kept a diary of the work done every day during the field measurement. I had two chainmen, I think, and a rodman. It is usual to charge 10 per cent. for tools during superintendence.

The item in B 1, of 920,710, was made up by deducting the whole amount of 20 actual excavation between 267 and 289 from the total amount of excavation as calculated from the cross sections of the work as completed, without allowing for the excavations between those two sections as shown on original cross sections—(Objected).

The crib wharfing projected between 247 and 259 is not included in the calculations in B 1. The 10 per cent. should cover all the tools and instruments used in the work from beginning to end, and also superintendence. I mean by superintendence overseeing the work and keeping the time of the men. Grant advised me to allow 15 per cent for sinkage and shrinkage; this was when I saw him at Metapedia at his own house; this was in the spring.

Cross-examined.—I did not bring with me the paper to which I referred after 30 my examination to refresh my memory in regard to B 1; I had not B 1 or A 1 or copies with me when I refreshed my memory. In finding out how B 1 was made up, I made calculations from other papers I had at home. I mean by instruments, plant—such as derricks, chains, pumps, etc., including carts, wheelbarrows, and whatever is used in prosecuting the work. My superintendence had reference to work done by the day. I said at Ottawa, that I believed the cross sections forwarded to me by Grant were correct. Grant, from his position and familiarity with the work, would be in a better condition to make more correct measurement than any one else. I was present at the measurements. I arrived at Metapedia 13th May; concluded the work 13th July. The week I was at work at Metapedia, was making traces of cross sections and plans; 40 I was not in the field. I did not tell Mitchell I could not make proper measurements within the time.

Mr. HENRY asks a question forgotten.

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The conformation of the country would admit of the crib-wharfing being plumb at the bank. The more correct way is to calculate the embankments from the cross sections.

WILLIAM TREMAINE.—Nine days would be a reasonable time to measure section 19 (9 miles.) A man could with ease arrange a mile a day. The calculations would require four times the time in making measurements on the ground where a man had no skilled assistance. I think O'Dell would do the work in the time mentioned in his evidence. From my examination of the cross section, I should say the crib-wharfing could be built with a plumb back.

Cross-examined.—The field work included chaining, centre line, and taking cross 10 sections of the cuttings with tape—a level wherever I deemed it necessary. Building of the natural surface and without excavation, the crib-wharfing could be built with a plumb back.

EXHIBIT "C."

Interrogatories to be Administered under Commission.

Interrogatories to be administered to John Jillett, Peter Grant and James Lowrie, at Ottawa, in the Province of Ontario:—

1. State your name, age, residence and occupation.
2. Do you know the above-named claimant Alexander McDonald? How long have you known him?
3. State whether or not you were engaged during the years 1872, 1873 and 1874, 20 or any of them, upon, or in connection with, the construction of the Intercolonial Railway, and, if so, in what capacity? and for what portion of said years?
4. Do you know what portion of said Railway which was designated section number nineteen, while the same was under contract and being constructed? and if you have any connection with said section during said period? State in what respect.
5. Can you state by whom the work of building said section of said Railway was performed? If yea, name the person or persons who performed the same.
6. If you state that any portion of said work was performed by the firm of McKenzie, McDonald & Co., state when said firm first commenced to perform work on said section.
7. Do you know whether or not any work had been done on said section before said firm commenced to work thereon? If yea, set out particularly by whom said work had been done, and the kind and the quantity of the several kinds of work done by each of said persons, if more than one.

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8. Do you know the amount of work done by the said firm of McKenzie, McDonald & Company on said section, after they commenced work on said section, until they finally stopped work thereon? If yea, state how you know?

9. Look upon the exhibit annexed hereto and marked "A," purporting to be a copy of an agreement made by Thomas Boggs and others with said firm; state whether or not you know the quantities of the different description of work specified in said paper-writing, which were done by said firm upon said section? if yea, set out fully and at large such quantities, distinguishing between each, and more particularly state the quantities of the following descriptions of work so done by said firm on said section after they commenced work thereon, viz:—

Earth excavations; rock excavations; crib-wharfing; rip-rap, hauled 2,000 feet; under drains (earth and rock excavations); catch-water drains (earth and rock excavations); first-class masonry; second-class masonry; paving; excavations in foundation clearing. 10

10. Do you know whether or not said firm did any work in connection with said section in diverting a road or roads from its or their original site? if yea, set out fully and at large the nature, quantity, extent and value of the work done by them in making such diversion, and particularly the quantities of the following: earth excavation; rock excavation; and the quantity and value of any culverts or fencing so done.

11. Did you give any certificate or certificates, or make any award or awards relating to the work done by said McKenzie, McDonald & Co.? if so produce and annex such to your answer hereto. 20

12. If you say you made one or more certificates or awards please state to whom you delivered the same; and in case you cannot produce the originals thereof, state why, and produce and annex to your answer true copies thereof.

13. Please state by whom the paper now produced and shewn to you and bearing date the eighth day of December, A. D. 1874, is signed?

14. If you say that the said paper is signed by you, please state to what contract or work it relates?

15. If you say that the said paper is signed by you and relates to the work performed by said McKenzie, McDonald & Co., and by said Alexander McDonald, as one of the members of the said firm, upon said section, please state under what authority and in performance of what duty you made such certificate or award? Answer fully.

16. Is the award or certificate referred to in the preceding interrogatories, the last one signed by you? If not, how otherwise? Answer fully.

17. Was the said award or certificate given by you as the final one, so far as the work upon the said contract of McKenzie, McDonald & Co. was concerned? If not, how otherwise?

18. Did you ever have any conversation with said Alexander McDonald in relation to said award or certificate? 40

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19. Did or did not the members of said firm of McKenzie, McDonald & Co., or said Alexander McDonald, recognize you as the resident engineer under the terms of their said contract? If not, whom did they, or he, to your knowledge recognize as such resident engineer?

If you know anything further favorable to the said contestant, please state the same as fully as if you were specially interrogated in relation thereto?

N. H. MEAGHER,
Att'y of Contestant.

Cross-Interrogatories.

The said claimant objects to the said several interrogatories, and each of them 10 on the grounds that they are irregular and improper, and to the evidence to be elicited thereunder, and the witnesses looking at copies of papers, and, reserving all objections thereto, puts the following cross-interrogatories:

1. When did your connection with section nineteen commence? and when did it terminate? Give the dates; state the various periods when you were absent, either abroad or elsewhere; when you were not in the discharge of your regular duties on said section. And how long was each of these periods? Who fulfilled your duties in your absence? What were your various duties in such connection? Name them each at length and all of them?
2. Besides your duties on section 19, did you have to perform duties on other 20 sections of the Intercolonial Railway during the same period you were engaged in connection with section 19, and what were such duties? In what proportion did you divide your time between these sections?
3. When did Thomas Boggs & Company, contractors for section number nineteen, or their agents, Mitchell & Oakes, begin work on section nineteen? Give the month and year. When did they finish the work?
4. Had you a copy or duplicate of their contract with the Crown while the work was being proceeded with, with specifications and plans referred to therein or referred to in the contract entered into by S. Parker Tuck, incorporated into said contract of Thomas Boggs & Co.? What did you do with these copies? If you can procure 30 them do so, and annex them to your deposition.
5. Did you ever see any such copies or duplicate of the contract, specifications and plans referred to therein in the possession of John R. Murray or Mitchell & Oakes.
6. How long was section nineteen, and how many stations was it composed of? How were these stations numbered? What was the distance between each station? Were these stations marked upon the ground, and how? Explain fully.

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7. What was the number of the station in section 19, at the easterly end of section 18?
8. Within what station or stations were Clark's Brook, McLean's Brook, No Man's Gulch, Kane's Brook, Man's Brook, Gilmore's Brook, respectively?
9. Who were Archibald and Vosburg? What stations did each of them contract for? Upon what stations of section 19 did they respectively actually perform work? For whom was it performed? When did they commence work, when did they stop? Give the exact dates. Did you measure their work?
10. Give the quantities of the earth excavations, rock excavations, crib-wharfing, rip-rap, paving, excavation in foundation, levelling, foundation cleaning, road diver- 10
sions, catch-water drains, packing stones round culverts, respectively which were performed by each of them between stations 162 and 380.
11. At what stations was each class of work performed by each of them? stating the amount at each station.
12. When did they perform the rock excavation? Be particular about the stations. Where did they perform the earth excavations you have referred to?
13. Give the amount of Rock and earth excavation performed by them severally during each month, from the first month to the last, they were employed at work between stations 162 and 380.
14. Did you make progress estimates under the contract of Thomas Boggs & Co. 20
for section 19, which included the work of Archibald and Vosburg? For what months were those estimates?
15. Could you tell by looking at those estimates how much of the work included in them was performed by Archibald and Vosburg?
16. What did you do with the monthly estimates under Thomas Boggs & Co's contract which included the work of Archibald and Vosburg? Where did you last see those estimates?
17. Do they include other work on said section 19 performed by others outside of stations 162 to 380?
18. Please explain fully how you can now come at the amount of work perform- 30
ed by Archibald and Vosburg, or either of them, on the said section?
19. Have you now or are there any memoranda made by you at the time the work was being performed by them, say 1870-1871, from which you could compute this work? What memoranda? What did you do with the memoranda? If you have any such annex them to your deposition?
20. In answering the seventh interrogatory, please state whether you are speaking from your recollection of the actual measurements made by you at the time the work was being performed by such sub-contractors.

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21. Did you certify all the work actually performed by Archibald and Vosburg ?

22. Did you not, in order to ascertain what was to be deducted from the whole work and thus to arrive at McKenzie, McDonald & Co.'s work, procure the amounts or quantities performed by said Archibald and Vosburg from C. S. Archibald, the book-keeper of Mitchell & Oakes, or one of them ? Did you not procure information from said C. S. Archibald or Mitchell or Oakes, directly or indirectly, as to the payments made by them to Archibald & Vosburg, or the quantities of work they were credited with, in order to make the necessary deductions to give you the work performed by Alexander McDonald ?

23. From whom did you procure these amounts or quantities ?

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24. Do you, in order to arrive at Alexander McDonald's work, deduct from all the work actually performed, the work you had already certified for Archibald and Vosburg ?

25. Was not some of the work performed by them, or either of them, rendered useless by changes in the line after performance of the work by them ?

26. Was not the line shifted nearer to the river or changed between stations 269 and 280, or thereabouts, rendering some earth performed by Archibald & Vosburg useless, and did not Alexander McDonald construct the line when changed ?

27. How much was rendered useless then ?

28. Again, at 171 and 172, was there not a change in the line after Archibald & Vosburg had performed work there which rendered part of the work useless ? How much of their work was thus rendered useless ?

29. After Archibald & Vosburg stopped work, and before McDonald commenced, would there not be sinkage and shrinkage which the latter would have to make up ?

30. Can you remember any place, or places, where Alexander McDonald had to do over again work which had been certified for while Archibald or Vosburg were at work then ? If so, where was it, and in what quantities ?

31. In answering the 8th and 9th interrogatories, are you speaking of the quantities of work actually performed or the amount you could only certify for under the contract with Boggs and Murray ?

30

32. Did you not, each month, while the work was being carried on upon section nineteen, return to the Government or Commissioners the work performed each month, in monthly progress certificates made up by you upon which the contractors were to be paid ? To whom were these certificates sent by you ?

33. Did they include the work performed between stations 162 and 380 by Alexander McDonald ?

34. Did not the contract with Thomas Boggs and John R. Murray require you to make these returns or

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35. Was it not a part of your duty or instructions to make these returns, irrespective of that contract?

36. Did they not include the work performed over the whole section indiscriminately? or could you distinguish what was performed on the stations between 162 and 380 by reference to the certificates alone?

37. Would it be possible to discover from these progress certificates now the quantities of work performed between 162 and 380?

38. Were not these the only returns or monthly certificates you were obliged to make in pursuance of your duties?

39. What became of these monthly certificates? Have you searched for them 10 where they ought to be and could not find them?

40. For what months did you give certificates under the contract with Thomas Boggs and John R. Murray for work on section 19?

41. Could you tell us the quantities of work performed on said section, or which are contained in each certificate so made up by you, and also the amount certified by the person who made them up in your absence?

42. If you can tell us the amount of each certificate, from first to last do so; specify the month for which the certificate was given.

43. At how many different places between 162 and 380 was there rock excavations performed? Give the various stations where this rock excavation was done? 20

44. Give us the several stations where the crib-wharfing between 162 and 380 was built? Does this include all the crib-wharfing between those two stations?

45. Where was the rip-rap between station 162 and 380 built? Give all the places between those stations where there was any rip-rap.

46. Look at the clause of paper "A," providing for changes in the description of the work, or quantities or location of the line between stations 247 and 259, and 351 and 355 x 50, and tell us if at the date of that contract (1st February, 1872,) there was shown on the engineer's plan the quantities of crib-wharfing and excavation between these stations, or between or at any stations on the whole line?

47. Did the engineer's plan then show quantities at all? How did it show them? 30

48. If it did so state what quantities of crib-wharfing and excavation respectively, were shown; first between 247 and 259, if there was any such change made there; then between 351 and 355 x 50, if there was any such change made there.

49. What change was made between those stations at either place, if made? At whose wish or request did you make the changes, or did you make them for the benefit of the line?

50. What became of the engineer's plan which was in existence 1st Feb., 1872?

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51. State what quantities there were of crib-wharfing and excavation respectively between stations 247 and 259, and between 351 and 355 x 50 respectively, before these changes and previous to 1st February, 1872? Were these quantities in the Bill of Works?

52. In making up the monthly certificates for the government did you certify for the work as it would have been if there had been no changes between those stations, or the quantity and class of work actually performed after the changes?

53. Was there not rip-rap built at station 374, Clarke's Brook, and at station 191, Gilmore's Brook?

54. Did you ever make a return of the rip-rap at 374 and 191 to anyone, or was it omitted from your returns of the work performed on this section?

55. Did you state in your evidence before the Exchequer Court, at the trial of Murray v. the Queen, that the rip-rap in those places was omitted from your measurements? Did you not state this before the arbitrator, and that a mistake had been made by you?

56. Was there not some rip-rap built at or near station 173? State what quantity there was.

57. When did you first discover that the rip-rap at 374 and 191 had been omitted from your returns?

58. If you have, in answer to the 9th interrogatory, given total quantities of the 20 different descriptions of work performed, state, or annex a statement to your deposition, showing the quantities of each class of work which was done at the various stations between 162 and 380?

59. How many cubic yards of rip-rap was built at each of the following stations, viz.: Station 225-226, 226, 231-234, 242-247x90, 278, 287, 295, 375?

60. How many cubic yards of crib-wharfing was built at each of the following stations, viz.: Station 247-252x30, 259-269x30, 305-317x90, 329x50-334, 339x50-355x50?

61. Are you aware that the arbitrator, Samuel Keefer, C. E., in the suit of Murray v. The Queen, allowed the contractors for an error of 430 feet in your returns of 30 the crib-wharfing at stations 258-268, and at 307-317, and added this 430 feet as omitted by you at these stations?

62. If this really was omitted by you from your returns as is found by the arbitrator, was it not also omitted from the paper dated 8th December, 1874, signed by you?

63. How much of the total quantity of crib-wharfing performed on section 19 was performed between stations 162 and 380? and how much outside of those stations?

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64. If the original bill of works showed the crib-wharfing as follows, which we assume it did, for the whole section,

79-83.....	400 ft.	
87-91.....	100	
102-106.....	400	
110-113.....	300	
249-268.....	1900	
308-317.....	900	
332-335.....	300	
340-355.....	1500	10
	6100	
Cubic yards.....	40,000	

how do you account for the difference between these quantities at the stations between 162 and 230 and what you have included in the paper of 8th December, 1874, as between those stations? Answer fully.

65. Have you not prepared a statement or Revised Bill showing the crib-wharfing as actually built on section 19 to be as follows, viz:

STATION.	LIN. FEET.	
80 — 83+50	350	
87+50— 91+10	360	
247 —252+30	530	20
258+30—268+50	1,020	
307 —317+50	1,050	
300 —334+90	490	
340 —355	1,500	
	5,300=29,650 c. yds.	

If not, what does your Revised Bill, referred to by the arbitrator, show in respect to the crib-wharfing?

66. If the quantities of crib-wharfing are not correctly given in the previous interrogatories at the several stations, please give the correct quantities. You do not state before the arbitrator that between 256 and 269 it should be 1100 feet instead of 1020 feet?

67. Please explain item "original schedule, 13,000 yards, in the paper of 9th December, 1874," and if it was not intended to show the quantity of crib-wharfing between stations 247—259, mentioned in the agreement "A," before the change therein proposed?

68. Between stations 248 and 253, where there was some crib-wharfing washed away and had to be rebuilt, according to Mr. Mitchell, did you, in making up your returns or certificates, allow both for the building and rebuilding, or did you certify only for the quantity as it stood completed? 40

69. At what stations between 162 and 380 was the rock excavation done? How much between stations 230-238? How much between 288-306, 206-217, 168-173, 175-180, 180-186, 217-221, 359-363?

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70. Annex to your answer a statement showing the quantities of embankment in cubic yards between station 162 and 380, giving the quantities at each station.

71. Between stations 247-359, what is the difference in quantities between the crib-wharfing actually built and that laid down in the Bill of Works?

72. How much earth was actually performed between those stations, 247-259?

73. What was the difference in quantities between the earth actually done and that laid down on the Bill of Works between stations 247-259?

74. Can you procure copies of the cross-sections between stations 162 and 380; if so, please do so and annex them to your deposition?

75. In your letter to the arbitrator of 5th February, 1878, you refer to an omission from your measurements at Clarke's brook, will you tell us if this was omitted also from your paper of 8th December, 1874?

76. Was there not some rock excavation in foundation for the three culverts from station 300 to 320? What quantity?

77. Was there not some rock excavation in foundations at Clarke's brook? What quantity?

78. Did you not return to the Government a lump sum for this, without giving quantities?

79. Can you state in what places, giving the stations, between station 162 and 380, earth was wasted? What quantity was wasted? 20

80. Can you state at what stations earth had to be borrowed for the embankments between 162 and 380? What quantity? Where were the borrow pits?

81. Referring to the paper bearing date the 8th of December, 1874, is that paper in the same condition as when you signed it?

82. Did you sign any other paper of the same date showing the same measurements but different in other respects? If you did, to whom did you give that other paper? How many different paper-writings did you sign of that date for the contractors?

83. Did you not refuse to make any award between the contractor and subcontractor, when requested so to do, unless they bound themselves in writing to abide by your award? 30

84. Did not Alexander McDonald refuse to sign any writing to be bound by your award?

85. Did not Alexander McDonald complain of your measurements of the work done by him?

86. How do you make up "force estimates," or arrive at estimates of the quantities of work performed by calculating the number of men and teams or force employed?

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87. Could you make up a fairly correct estimate of the different classes of work performed by ascertaining the force on a given piece of work?

88. Please explain fully, for the assistance of the Court, in reference to the different classes of work, what quantities a given force would perform, distinguishing between teams and men?

89. Have you not at times made up estimates in that way, and can you not form a good idea of the quantity of work performed by a given force?

90. Did you not make a final measurement of the work on section 19 on the 3rd May, 1875, or thereabouts? Please explain how that came to be made?

91. Did the contractors suspend the work at any time on section 19, when a 10 supplementary estimate was given? In what month and year did this suspension occur, and how long did it last? What was the cause of it?

(Signed) F. A. LAURENCE,
Atty of Claimant.

(C 2—J. W. J.)

INTERCOLONIAL RAILWAY.

METAFEDIA, 2nd Dec., 1874.

The following measurements are made by the undersigned at the request of Thos. Boggs & Co., contractors for section 19, or their agents, Mitchell and Oake, and their sub-contractors, McKenzie, McDonald & Co., to be in the spirit and meaning of the 20 contract or agreement between the said parties.

The quantities are all work actually done, except where the agreement entered into specifies that the second party gets the benefit of savings.

Due notice has been taken of the work previously done on this contract by Messrs. Archibald and Vosburg, previous sub-contractors on same portion of section No. 19.

Total earth	155,460 c. yds.		
Deduction as above	10,680 "		
	144,780 "	at 23 cts.	\$33,299 40
Total rock	6,537		
" outlets	10		30
Deduct as above	6,547		
	1,170		
	5,377 c. yds.	at 95 cts.	5,108 15
Crib-wharfing, as built.	9,907 "		
" original schedule	13,000 "		
	22,907 "	at 85 cts.	19,470 95

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Rip-rap	770 c. yds. (no price)		
"	660 " at \$1.50	990 00	
Under drains	2,700 c. ft. at \$5 p 100 ft	135 00	
Catch-water drains :			
Earth	2,850 c. yds. at 23 cts.	655 50	
Rock	10 " at 95 cts.	9 50	
First-class masonry	752 "		
Second-class masonry	684 "		
	1,436 " at \$11	15,796 00	
Paving, 141 c. yds., price adjusted, \$3		423 00	10
Excavations in foundations	1,930 " at 50 cts.	965 00	
Allow leveling rock foundations		50 00	
Clearing, say 2½ acres, at \$20		50 00	
		\$76,952 50	
Road diversion from station 299 to 320.			
Earth 5,550 c. yds. at 23 cts	\$1,276 50		
Rock, 630 c. yds. at 95 cts	598 50		
Culverts	50 00		
Posting for fence entire length	63 00	1,988 00	
Total		\$78,940 50	20

Seventy-eight thousand nine hundred and forty dollars and fifty cents being the amount ascertained for work done by the party of the second part, between stations 162 and the upper end of this contract, station 380.

(Sg'd) JOHN JILLET,
(Sg'd) EDWD. GRANT.

Witness, JAMES LOWRIE,

Signed Metapedia, 8th December, 1874.

(D. 2, J. W. J.)

INTERCOLONIAL RAILWAY,

2ND DECEMBER, 1874. 30

The following measurements are made by the undersigned at the request of Thomas Boggs & Co. and their sub-contractors, Messrs. McKenzie, McDonald & Co., to be done in the true spirit and meaning of the contract or agreement between the said parties :

The quantities are all work actually done, except where the agreement entered into specifies that the second party gets the benefit of savings.

Due notice has been taken of the work previously done on this contract by Messrs. Vosburg and Archibald, previous sub-contractors, on same portion of section number 19.

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Total earth.....	155,460	
Deduct as above.....	10,680	
	<u>144,780 c. yds., 23 cts.,</u>	\$34,299.40
Total rock.....	6,537	
" outlets.....	10	
	<u>6,547</u>	
Deduct as above.....	1,170	
	<u>5,377 @ 95</u>	5,108.15
Crib-wharfing as built.....	9,907	
" original schedule.....	13,000	10
	<u>22,907 @ 85</u>	19,470.95
Rip rap, 770 c. yds.....		(no price.)
" 660 @ \$1.50.....		990.00
Under-drains, 2,700 cub. feet, \$5.00 per 100 ft.....		135.00
CATCH-WATER DRAINS.		
Earth, 2,800 c. yds. @ 23 cts.....	\$655.50	
Rock, 10 " 95 ".....	9.50	615.00
First-class masonry.....	752	
Second ".....	684	
	<u>1,436 @ \$11.00</u>	15,796.00 20
Paving 141 c. yds., price adjudicated, \$3.00.....		423.00
Excavations in foundations, 1,930 @ 50.....		965.00
Allow for levelling rock foundations.....		50.00
Clearing say 2.50 acres @ \$20.....		50.00
		<u>\$76,952.50</u>
ROAD DIVISION 299 TO 320.		
Earth, 5,550 at 23 cts.....	\$1,276½	
Rock, 630, " 95 ".....	598½	
Culverts.....	50	
Posts for entire length, say.....	63	50
	<u>\$1,988.00</u>	\$78,940.50

Seventy-eight thousand, nine hundred and forty dollars and fifty cents being the amount ascertained for the work done between station 162 and the upper end of this contract at station 380.

(Sgd.) EDW. GRANT, C. E.
" JOHN JILLET.

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DEPOSITION OF WITNESSES, taken at Ottawa, in the Province of Ontario, before us, Joseph James Gormally (called in said Commission Joseph George Gormally) and G. Lefroy McCaul, Esquires, both of Ottawa aforesaid, Barristers, Commissioners appointed for the purpose by a Commission issued out of the County Court and Court of Insolvency for the County of Halifax, Nova Scotia, in the matter of the Estate of John R. Murray, an Insolvent, Alexander McDonald, Claimant, and James G. Foster, Assignee of said Estate, Contestant, and which Commission is annexed hereto, upon interrogatories and cross-interrogatories to such Commission also annexed, that is to say:

PETER GRANT, of Ottawa aforesaid, Civil Engineer, a Witness on the part of the 10 Contestant, being duly sworn and examined,—

1. To the first interrogatory the said deponent saith—My name is Peter Grant; my age is 44; my residence is Stewarltown, Ottawa; my occupation is a railway engineer.

2. To the second interrogatory the said deponent saith—I know the above named claimant, Alexander McDonald; I have known him since 1870.

3. To the third interrogatory the said deponent saith—I was engaged in connection with the construction of the Intercolonial Railway during the years 1872, 1873 and 1874 as division engineer; I was engaged as such for the whole of the said years, except two months, during which I had leave of absence. 20

4. To the fourth interrogatory the said deponent saith—I know that portion of said railway which is designated section No. 19, and I knew the same while it was under contract and being constructed; I had connection with the said section 19 as engineer in charge.

5. To the fifth interrogatory the said deponent saith—I can state the persons who performed the work on the said section; Mitchell and Oakes were the contractors; the sub-contractors were McKenzie, McDonald & Co., Vosburg, Archibald, Robert Gordon, and several others.

6. To the sixth interrogatory the said deponent saith—I cannot state when McKenzie, McDonald & Co. began operations, but I think it was in 1871. 30

7. To the seventh interrogatory the said deponent saith—There was work done on said section before firm of McKenzie, McDonald & Co. began to work. There were three sub-contractors before they began, Vosburg, Archibald and Gordon. It was all earth work up to the time McKenzie, McDonald & Co. began. I cannot state the quantity of work done by these three prior sub-contractors, nor the specific amount done by each of them before McKenzie, McDonald & Co. began. This can easily be learned from my books, which were filed as Exhibits in the suit of Murray versus the Queen in the Exchequer Court.

8. To the eighth interrogatory the said deponent saith—I cannot now say from memory what amount of work McKenzie, McDonald & Co. did, but I did know. The 40 matter occurred 9 years ago.

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9. To the ninth interrogatory the said deponent saith—I look upon Exhibit marked A. mentioned in interrogatory No. 9, and by reference to paper, writing now produced and marked B, which is signed by me and a Mr. Jillett, I can state the quantities of the different descriptions of work specified in Exhibit A, which were done by McKenzie, McDonald & Co. The different descriptions of work are as follows:—

Earth excavation	144780 yds. cubic.	
Rock excavation	5377 yds. cubic.	
Crib Wharfing	22907 yds. cubic.	
Rip-ran hauled 2000 feet.....	660 yds. cubic.	10
Under drains.....	2700 feet cubic.	

(I do not know the amount of earth and rock excavation in respect of underdrains, but I do not think there was any rock. The words "cubic feet," written in Exhibit B, opposite underdrains, and also above, is incorrect, it should be lineal feet.)

CATCH WATER DRAINS.

Earth excavation	2850 cu. yds.	
Rock excavation	10 cu. yds.	
First-class masonry	752 cu. yds.	
Second-class masonry	684 cu. yds.	
Paving.....	141 cu. yds.	20
Excavations in foundations	1930 cu. yds.	
Clearing.....	2½ acres.	

10. To the tenth interrogatory the said deponent saith—The said firm of McKenzie, McDonald & Co. did all the work in connection with diversions of road. This road was the Metapedia Post road, between St. Flavie and Cross Point. By referring to Exhibit B I can give the amounts of work done. (The nature of the work done was setting back this road out of the way of the railroad line.)

Earth excavation.....	5550 c. yds. at 23c.,	\$1276.50	
Rock excavation.....	630 c. yds. at 95c.,	598.50	
Culverts (don't know quantity)		50.00	30
Fencing (don't know quantity).....		63.00	
		<u>\$1988.00</u>	

11. To the eleventh interrogatory the said deponent saith—Exhibit B is the only award or certificate given by me in connection with this sub-contract.

12. To the twelfth interrogatory the said deponent saith—Exhibit B is made in duplicate, one copy was sent by me by mail to Mr. S. D. Oakes. I don't know what became of the other.

13. To the thirteenth interrogatory said deponent saith—The said Exhibit B being now produced and shown to me, bearing date the 8th day of December, A. D., 1874, is signed by John Jillett and myself.

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14. To the fourteenth interrogatory said deponent saith—The said Exhibit B relates to the work done by McKenzie, McDonald & Co. on their sub-contract under Mitchell and Oakes on Section 19 of the Intercolonial Railway.

15. To the fifteenth interrogatory said deponent saith—I made the award (Exhibit B) under no authority and in performance of no duty, but at the request of A. McDonald and S. D. Oakes, and as a favor to them.

16. To the sixteenth interrogatory the said deponent saith—The said Exhibit B is the last and only award signed by me in this connection.

17. To the seventeenth interrogatory the said deponent saith—The said award (Exhibit B) was the final award given by me so far as the work on the said sub-10 contract of McKenzie, McDonald & Co. was concerned.

18. To the eighteenth interrogatory the said deponent saith—I had no conversation with Alexander McDonald in relation to said award as far as I recollect. If I had any it was before the award was made.

19. To the nineteenth interrogatory the said deponent saith—The members of the firm of McKenzie, McDonald & Co. and Alexander McDonald recognized me as the resident engineer under the terms of their said contract on said section, and as far as I am aware they recognize no other.

20. To the twentieth interrogatory the said deponent saith—I know of nothing further. 20

MR. O'DONERTY for the contestant, objects to the cross-interrogatories of the claimant, and each of them, on the ground that they are and each of them is irregular and improper, and to the evidence to be given thereunder, on the ground that the same is inadmissible and improper.

1. To the first cross-interrogatory the said deponent saith—My connection with section 19 aforesaid begun in the spring of 1870 and terminated in June, 1876. I cannot state definitely when it began, but think it was in June, 1870. I was absent from about the 24th day of March, 1872, until about the 24th day of May in the same year. This is the only time I was ever absent on official leave. I was on several other occasions away for a day or two salmon fishing. My assistant fulfilled my 30 duties while I was absent. My duties as engineer were—to lay out work for contract, to see that the work was carried out to the proper curves and grades, to see that the work was done according to the specifications and plans furnished the contractors, to return monthly progress estimates of work done, &c.

2. To the second cross-interrogatory the said deponent saith—After a certain time I had similar duties to perform on section 18, but as I lived on section 19 I gave rather more of my time to section 19. I think I gave about two-thirds of my time to section 19 and one-third to section 18 during the period that I had both in charge. I had more efficient assistance on section 18.

3. To the third cross-interrogatory the said deponent saith—Mitchell & Oakes 40 began work on section 19 at the end of August, 1870, as agents for Boggs & Co., and finished the work in 1874, as well as I can recollect.

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4. To the fourth cross-interrogatory the said deponent saith—I never had a copy of the contract of S. Parker Tuck & Co. (assigned to Boggs & Co.) with the Crown, but I had a printed copy of the plans and specifications referred to therein in my office. I delivered all these to the chief engineer of the Intercolonial Railway at Ottawa, and have not seen them since the trial of the case of Murray and the Queen in the Exchequer. I am therefore unable to produce them and annex them to my deposition.

5. To the fifth cross-interrogatory the deponent saith—I saw the contract, or what I supposed to be the contract, in the possession of John R. Murray; but I cannot say that I ever saw any of the plans or specifications referred to therein in his possession, or in the possession of Mitchell & Oakes.

6. To the sixth cross-interrogatory the said deponent saith—Section 19 was about $9\frac{1}{2}$ miles in length, and was composed of about 460 stations, as well as I can recollect. These stations were numbered from 370 to about 450, and then from 0 to 380. The distance between the stations was supposed to be 100 feet, except where they were lengthened or shortened by the alteration of the alignment. They were marked upon the ground by stakes marked with the numbers in red chalk.

7. To the seventh cross-interrogatory the said deponent saith—I think it was 370, but am not positive.

8. To the eighth cross-interrogatory the said deponent saith—I cannot answer 20 this question without seeing the profile, which is not here.

9. To the ninth cross-interrogatory the said deponent saith—Archibald & Vosburg were two sub-contractors under Mitchell & Oakes. Archibald had the east end and Vosburg the west end of McKenzie, McDonald & Co.'s contract. I cannot locate them by stations. They did the work for Mitchell & Oakes. I cannot give the dates at which they began and ended work. I measured their work.

10. To the tenth cross-interrogatory the said deponent saith: I cannot answer this question without having access to the books and papers filed in the Exchequer Court, as above mentioned.

11. To the eleventh cross-interrogatory the said deponent saith—I cannot 30 answer this question for the same reason.

12. To the twelfth cross-interrogatory the said deponent saith—I cannot answer this for the same reason.

13. To the thirteenth cross-interrogatory the said deponent saith—A copy of the progress estimate would enable me to answer, but I have not got them.

14. To the fourteenth cross-interrogatory, the said deponent saith—I did make progress estimates under the contract of Thomas Boggs & Co. which included the work of Vosburg and Archibald, but I cannot tell for what months.

15. To the fifteenth cross-interrogatory, the said deponent saith—I could.

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16. To the sixteenth cross-interrogatory, the said deponent saith—I sent them on the first of each month to the Chief Engineer at Ottawa. I don't think I have seen them since.

17. To the seventeenth cross-interrogatory, the said deponent saith—Yes, they include the whole of section 19.

18. To the eighteenth cross-interrogatory, the said deponent saith—I cannot tell this without looking at the books and papers in the hands of the Government.

19. To the nineteenth cross-interrogatory, the said deponent saith—The memoranda and computation were both along with the documents filed in the Exchequer Court, as above mentioned. I delivered all these documents to Mr. L. K. Jones, secretary of the Chief Engineer at Ottawa, and I therefore cannot annex any of them to my depositions. 10

20. To the twentieth cross-interrogatory, the said deponent saith—I was unable to answer in that particular the said seventh interrogatory.

21. To the twenty-first cross-interrogatory, the said deponent saith—Yes, I did.

22. To the twenty-second cross-interrogatory, the said deponent saith—I did not. I did not procure information from C. S. Archibald or Mitchell, or Oakes, directly or indirectly, as to the payments made by them to Archibald and Vosburg, or as to the quantities of work they were credited with, in order to make the necessary deductions to give the work performed by Alexander McDonald, except as hereinafter 20 stated.

23. To the twenty-third cross interrogatory, the said deponent saith—From my own measurements.

24. To the twenty-fourth cross-interrogatory, the said deponent saith—Yes.

25. To the twenty-fifth cross - interrogatory, the said deponent saith—Yes, some of Vosburg's was.

26. To the twenty-sixth cross-interrogatory, the said deponent saith—Yes.

27. To the twenty-seventh cross-interrogatory, the said deponent saith—I cannot say exactly how much, but it was not much, because they had only made a beginning. 30

28. To the twenty-eighth cross-interrogatory, the said deponent saith—I do not remember of any change at that place.

29. To the twenty-ninth cross-interrogatory, the said deponent saith—No; because they were paid by pit measurement.

30. To the thirtieth cross-interrogatory, the said deponent saith—No.

31. To the thirty-first cross-interrogatory, the said deponent saith—The work actually performed, and 13,000 cubic yards crib-wharfing, original schedules, which was not actually performed.

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32. To the thirty-second cross-interrogatory, the said deponent saith—Yes; to the Chief Engineer.

33. To the thirty-third cross-interrogatory, the said deponent saith—They did.

34. To the thirty-fourth cross-interrogatory, the said deponent saith, and to the thirty-fifth cross-interrogatory, the said deponent saith—It was a part of my duty to make such returns, irrespective of any contract.

36. For the thirty-sixth cross-interrogatory the said deponent saith—These progress estimates shewed the work done indiscriminately without reference to the sub-contractors, and I could not tell by reference to them alone the amount of work done by each.

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37. To the thirty-seventh cross-interrogatory the said deponent saith—No.

38. To the thirty-eight cross-interrogatory the said deponent saith—These were all.

39. To the thirty-ninth cross-interrogatory, the said deponent saith—I gave them to the chief engineer. I think they were searched for by me, but I did not find them.

40. To the fortieth cross-interrogatory, the said deponent saith—I gave them for all the months they worked.

41. To the forty-first cross-interrogatory, the said deponent saith—I could tell by reference to the books. In my absence they were made up by Charles Blackwell and Marcus Smith.

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42. To the forty-second cross-interrogatory, the said deponent saith—I cannot do so without seeing the profile.

43. To the forty-third cross-interrogatory, the said deponent saith—I cannot do this for the same reason.

44. To the forty-fourth cross-interrogatory, the said deponent saith—Not without the profile.

45. To the forty-fifth cross-interrogatory, the said deponent saith—It was mostly at the ends of the crib-wharfing. I cannot give the places where there was rip-rap from memory.

46. To the forty-sixth cross-interrogatory, the said deponent saith—No.

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47. To the forty-seventh cross-interrogatory, the said deponent saith—It did not show quantities—only positions.

48. To the forty-eighth cross-interrogatory, the said deponent saith—The same answer as to the forty-seventh applies.

49. To the forty-ninth cross-interrogatory the said deponent saith—The location of the line between 247 and 259 was moved back from the river twenty or thirty feet. Between 351 and 355x50 the line was moved towards the river about

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twenty or thirty feet. The changes were made by me at the request of the contractors, and in my opinion for the benefit of the line.

50. To the fiftieth cross-interrogatory the said deponent saith—It was sent to Ottawa along with the other papers.

51. To the fifty-first cross-interrogatory the said deponent saith—The quantities were mentioned in the Bill of Works in a lump sum of about 40,000 cubic yards. I made up the quantities in special detail, but I cannot now state them without seeing that computation.

52. To the fifty-second cross-interrogatory the said deponent saith—The quantity and class of work actually performed after the charges was certified for by me 10 in making up monthly certificates.

53. To the fifty-third cross-interrogatory the said deponent saith—There was.

54. To the fifty-fourth cross-interrogatory the said deponent saith—I did make a return to the Government for several years, but it was omitted from the final estimates to the Government by a clerical error.

55. To the fifty-fifth cross-interrogatory the said deponent saith—I did for some time.

56. To the fifty-sixth cross-interrogatory the said deponent saith—There was, but I cannot state the quantity.

57. To the fifty-seventh cross-interrogatory the said deponent saith—At the 20 trial of *Murray v. Queen* in Exchequer Court.

58. To the fifty-eighth cross-interrogatory the said deponent saith—I have answered this question by annexing exhibit "B."

59. To the fifty-ninth cross-interrogatory the said deponent saith—I cannot tell, but in my final return these were set down separately.

60. To the sixtieth cross-interrogatory the said deponent saith—The last answer applies.

61. To the sixty-first cross-interrogatory the said deponent saith—I am not aware that he did so.

62. To the sixty-second cross-interrogatory, the said deponent saith—I do not 30 think it was omitted.

63. To the sixty-third cross-interrogatory, the said deponent saith—I cannot tell now. This is all in my final return.

64. To the sixty-fourth cross-interrogatory, the said deponent saith—The difference is in the change of the alignment.

65. To the sixty-fifth cross-interrogatory, the said deponent saith—I have, and amounts mentioned seem to be correct.

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66. To the sixty-sixth cross-interrogatory, the saith deponent saith—The quantities of crib-wharfing are, I believe, correctly given in cross-interrogatory No. 65. I did not state before the arbitration that between 256 and 269 the crib-wharfing should be 1,100 feet instead of 1,020 feet. The difference in the measurement was made up of rip-rap.

67. To the sixty seventh cross-interrogatory, the said deponents saith—It is so intended.

Adjourned at 5.15 p. m. till 8 p. m., at the same place.

8 p. m. met. Mr. O'DOHERTY and Mr. LAWRENCE present.

Examination of Peter Grant resumed.

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68. To the sixty-eighth interrogative, the said deponent saith—I certified for the quantity as it stood completed only.

69. To the sixty-ninth cross-interrogatory, the said deponent saith—I cannot tell without the said documents, filed as aforesaid.

70. To the seventieth cross-interrogatory, the said deponent saith—I cannot tell without seeing the final estimate and report to the Chief Engineer.

71. To the seventy-first cross-interrogatory, the said deponent saith—I cannot tell without seeing the plans and sections.

72. To the seventy-second cross-interrogatory, the said deponent saith—I cannot tell without reference to the papers aforesaid, filed in the Exchequer.

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73. To the seventy-third cross-interrogatory, the said deponent saith—I cannot tell.

74. To the seventy-fourth cross-interrogatory the said deponent saith—I cannot get them.

75. To the seventy-fifth cross-interrogatory the said deponent saith—My impression is that it was not.

76. To the seventy-sixth cross-interrogatory the said deponent saith—There was no rock excavation, but they had to level the rock to receive masonry.

77. To the seventy-seventh cross-interrogatory the said deponent saith—Answer to seventy-six applies to this also.

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78. To the seventy-eighth cross-interrogatory the said deponent saith—I returned a lump sum.

79. To the seventy-ninth cross-interrogatory the said deponent saith—There was earth wanted somewhere near Station No. 320. There was over a thousand yards.

80. To the eightieth cross-interrogatory the said deponent saith—I cannot tell.

81. To the eighty-first cross-interrogatory the said deponent saith—It is. (Exhibit B.)

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82. To the eighty-second cross-interrogatory the said deponent saith—I did not. I signed Exhibit B. in duplicate. I don't know where the duplicate went to. Signed only Exhibit B in duplicate.

83. To the eighty-third cross-interrogatory the said deponent saith—I did.

84. To the eighty-fourth cross-interrogatory the said deponent saith—He did not to me.

85. To the eighty-fifth cross-interrogatory the said deponent saith—Never to me.

86. To the eighty-sixth cross-interrogatory the said deponent saith—I make up force returns from personal observation from reports of my subordinates and from 10 reports of the time-keepers of the contractors. I would arrive at the estimates of the quantities performed by calculating the number of men and teams or force employed in the following manner: By allowing from 5 to 7 to 10 yards per man according to the difficulties of the ground. The witness here (Mr. Lawrence objecting) says in explanation I only adopted this plan twice or three times.

87. To the eighty-seventh cross-interrogatory, the said deponent saith—Yes, pretty nearly from a progress estimate.

88. To the eighty-eighth cross-interrogatory, the said deponent saith—As an average 7 yards to a man, including teams.

89. To the eighty-ninth cross-interrogatory, the said deponent saith—Yes, two 20 or three times I have made up progress estimates in that way. Yes, pretty fair.

90. To the ninetieth cross-interrogatory, the said deponent saith—I probably dated a final estimate on or about that date. I made it by the order of Mr. Schrieber who was then acting as engineer-in-chief.

91. To the ninety-first cross interrogatory, the said deponent saith—They did. To the best of my knowledge it was in the winter of 1873, and lasted about a month. The cause of the suspension was as follows:—There was a long rock cutting, which, in order to get done in time, the contractors began at both ends, and in the middle also. In order to begin in the centre they had to excavate a lot of extra rock-cutting not otherwise needed. I allowed this extra work to go in the progress estimates at the 80 time, taking it off gradually from time to time. When this work came to be entirely taken off as had to be done when the whole cutting was nearly complete, the contractors found themselves short of money on account of it, and had to suspend.

(Sg'd) PETER GRANT.

Sworn and examined and signed by the above named
Peter Grant, at Ottawa, in the County of Carleton,
in the Province of Ontario, this twentieth
fourth day of February, A. D. 1880.

(Sg'd) J. J. GORMALLY,

(Sg'd) G. LEFROY McCaul,

Commissioners aforesaid.

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The commissioners then adjourned until the 25th day of February, A. D. 1880, at the same place, having notified such adjournment to MR. O'DOHERTY and MR. LAWRENCE.

(Sg'd) J. J. GORMALLY,
(Sg'd) G. LEFROY McCAUL,
Commissioners.

On the 25th day of February, A. D. 1880, pursuant to the above adjournment, the Commissioners met at the same place. Present—MR. O'DOHERTY and MR. LAWRENCE, Counsel.

JOHN JILLET, of the City of Belleville, in the County of Hastings, in the Province of Ontario, Civil Engineer, now steamboat proprietor, a Witness on the part of the Contestant, being duly sworn and examined,—

1. To the first interrogatory the said deponent saith—My name is John Jillett; my residence is the said city of Belleville; my occupation at present is steamboat owner; my age is 38.

2. To the second interrogatory the said deponent saith—Yes; I have known him for upwards of eight years.

3. To the third interrogatory the said deponent saith—I was employed during the years 1872, 1873 and 1874 in construction of the Intercolonial Railway; first as rodman, then as second assistant engineer, and afterwards as assistant engineer.

4. To the fourth interrogatory the said deponent saith—Yes; in the capacity so mentioned in number three.

5. To the fifth interrogatory the said deponent saith—Mitchell and Oakes, Murphy, McKenzie, McDonald & Co., Archibald, Vosburg, Munroe, Gordon, McKiel, and others.

6. To the sixth interrogatory the said deponent saith—I don't remember.

7. To the seventh interrogatory the said deponent saith—I don't remember.

8. To the eighth interrogatory the said deponent saith—Yes; up to the 8th December, 1874. From measurement.

9. To the ninth interrogatory the said deponent saith—I do.

Earth excavation.....	144,780 cubic yds.	30
Rock do.	5,377 "	
Crib-wharfing, (Looking at exhibit B—I cannot understand this).		
Rip-rap hauled, 2,000 feet, (Cannot tell this either).		
Under Drain, 2,700 cubic feet in exhibit B, (Should be 2,700 lineal feet).		

CATCH-WATER DRAINS.

Earth excavation.....	2,850 cubic yards.
Rock "	10 "
First-class masonry ..	752 "

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Second-class masonry	684 cubic yards.
Paving.....	141 "
Excavation in foundations.....	1,930 "
Clearing.....	2½ acres.

10. To the tenth interrogatory, the said deponent saith—They did a portion.

Earth, 5,550 cubic yards, at 93 cts.....	\$,276 50
Rock, 630 " at 95 cts.....	598 50
Culverts.....	50 00
Fences.....	63 00
	\$1,981 00

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11. To the eleventh interrogatory, the said deponent saith—The only award or certificate made by me was Exhibit B. I helped Mr. Grant to make Exhibit B.

12. To the twelfth interrogatory, the said deponent saith—I executed two copies of Exhibit B, one of which I gave to Mr. Grant and the other I kept, which I put in as Exhibit C. There may have been a triplicate made but I only remember the two produced here, being Exhibits B and C.

13. To the thirteenth interrogatory, the said deponent saith—By Peter Grant and myself.

14. To the fourteenth interrogatory, the said deponent saith—It relates to a piece of section 19, which Mr. McDonald did for Mitchell & Oakes.

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15. To the fifteenth interrogatory, the said deponent saith—I had no authority to make it, nor was it in pursuance of my duty, as, I think, I was off the road at that time.

16. To the sixteenth interrogatory, the said deponent saith—I think that is the last one.

17. To the seventeenth interrogatory, the said deponent saith—I cannot say whether it was final or not.

18. To the eighteenth interrogatory, the said deponent saith—I don't remember.

19. To the nineteenth interrogatory the said deponent saith—They recognized Mr. Grant as resident engineer and not me.

20. To the twentieth interrogatory the said deponent saith—I don't know any- 30 thing further.

MR. O'DOHERTY for the contestant, objects to the cross-interrogatories of the claimant, and each of them, on the ground that they are and each of them is irregular and improper, and to the evidence to be given thereunder, on the ground that the same is inadmissible and improper.

1. To the first cross-interrogatory the said deponent saith—I think it began in the year 1879. Can't tell month, and it ended about the end of 1874. I was absent

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several times; but I do not remember all the times. I was away once for about six weeks in the fall of 1873 and again for two or three weeks on the Paspebiac survey. I do not know who fulfilled my duties when I was away. My principal duties were to lay out the work—to measure the same monthly—to make progress estimates and any other things the resident engineer required me to do.

2. To the second cross-interrogatory the said deponent saith—I had nothing to do with any other section except 18, when I went to section 18 for a few hours to assist in laying out a bridge at Mill Stream.

3. To the third cross-interrogatory the said deponent saith—I cannot say.

4. To the fourth cross-interrogatory the said deponent saith—I think there was 10 a copy of the contract with plans and specifications in Mr. Grant's office. I left them there. I cannot produce them.

5. To the fifth cross-interrogatory the said deponent saith—I do not remember seeing it with Murray or Mitchell and Oakes.

6. To the sixth cross-interrogatory, the said deponent saith—I think section 19 was about $9\frac{1}{4}$ miles long. I don't remember how many stations there were. I can't state how they were numbered without seeing the plan. 100 feet was the usual distance between stations. They were marked by a stake with numbers in Roman numerals.

7. To the seventh cross-interrogatory, the said deponent saith—I think it was 380. 20

8. To the eighth cross-interrogatory, the said deponent saith—I cannot tell without seeing the profiles.

9. To the ninth cross-interrogatory, the said deponent saith—Archibald and Vosburg were, I believe, sub-contractors on section 19. I do not know what stations they contracted for. I don't know for whom they worked. I measured the work. I can't give the quantities.

10. To the tenth cross-interrogatory, the said deponent saith—I cannot tell.

11. To the eleventh cross-interrogatory, the said deponent saith—I cannot tell.

12. To the twelfth cross-interrogatory, the said deponent saith—I cannot tell.

13. To the thirteenth cross-interrogatory, the said deponent saith—I cannot tell. 30

14. To the fourteenth cross-interrogatory, the said deponent saith—Yes. Every month they were made, but I did not always make them.

15. To the fifteenth cross-interrogatory, the said deponent saith—I could not now, but I could at the time.

16. To the sixteenth cross-interrogatory, the said deponent saith—I gave them to Mr. Grant. I saw them last in his office at Metapedia.

17. To the seventeenth cross-interrogatory, the said deponent saith—I cannot say.

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18. To the eighteenth cross-interrogatory, the said deponent saith—I can't come at it.

19. To the nineteenth cross-interrogatory, the said deponent saith—I have memoranda, but have not got them here.

20. To the twentieth cross-interrogatory the said deponent saith—I did not answer it.

21. To the twenty-first cross-interrogatory the said deponent saith—I don't know.

22. To the twenty-second cross-interrogatory the said deponent saith—I don't remember. 10

23. To the twenty-third cross-interrogatory the said deponent saith—I don't remember of procuring them at all.

24. To the twenty-fourth cross-interrogatory the said deponent saith—Exhibit B shows that I and Mr. Grant did.

25. To the twenty-fifth cross-interrogatory the said deponent saith—I think there was a small portion.

26. To the twenty-sixth cross-interrogatory the said deponent saith—I think there was a small portion. I think he did.

27. To the twenty-seventh cross-interrogatory the said deponent saith—I don't know. 20

28. To the twenty-eighth cross-interrogatory the said deponent saith—I don't know.

29. To the twenty-ninth cross-interrogatory the said deponent saith—I don't know.

30. To the thirtieth cross-interrogatory the said deponent saith—I don't know.

31. To the thirty-first cross-interrogatory the said deponent saith—Quantities actually done.

32. To the thirty-second cross-interrogatory the said deponent saith—Yes; and gave them to Mr. Grant.

33. To the thirty-third cross-interrogatory the said deponent saith—They must have done so. 30

34. To the thirty-fourth cross-interrogatory the said deponent saith—

35. And to the thirty-fifth cross-interrogatory the said deponent saith—It was a part of my duty to make such returns, irrespective of any contract.

36. To the thirty-sixth cross-interrogatory the said deponent saith—I think I could not distinguish.

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37. To the thirty-seventh cross-interrogatory the said deponent saith—I don't think it would.

38. To the thirty-eighth cross-interrogatory the said deponent saith—They were.

39. To the thirty-ninth cross-interrogatory the said deponent saith—I do not know what became of them. I have never searched for them.

40. To the fortieth cross-interrogatory the said deponent saith—I don't know.

41. To the forty-first cross-interrogatory the said deponent saith—I could not without seeing certificates.

42. To the forty-second cross-interrogatory the said deponent saith—I cannot. 10

43. To the forty-third cross-interrogatory the said deponent saith—I can't say.

44. To the forty-fourth cross-interrogatory the said deponent saith—I cannot.

45. To the forty-fifth cross-interrogatory the said deponent saith—I cannot.

46. To the forty-sixth cross-interrogatory the said deponent saith—They were shown on the plan. The positions—not the quantities.

47. To the forty-seventh cross-interrogatory the said deponent saith—The engineer's plan did not show quantities, but the profile did.

48. To the forty-eighth cross interrogatory the said deponent saith—It did not.

49. To the forty-ninth cross-interrogatory the said deponent saith—I do not remember the stations. There were some changes made at the request of the con- 20 tractors.

50. To the fiftieth cross-interrogatory the said deponent saith—I do not know.

51. To the fifty-first cross-interrogatory the said deponent saith—I do not know.

52. To the fifty-second cross-interrogatory the said deponent saith—The work actually performed after the changes.

53. To the fifty-third cross-interrogatory the said deponent saith—I think there was at both.

54. To the fifty-fourth cross-interrogatory the said deponent saith—I cannot say. 30

55. To the fifty-fifth cross-interrogatory the said deponent saith—I don't think it.

56. To the fifty-sixth cross-interrogatory, the said deponent saith—I think there was rip-rap there, but I can't state the quantity.

57. To the fifty-seventh cross-interrogatory, the said deponent saith—I don't know that I ever discovered it.

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58. To the fifty-eighth cross-interrogatory, the said deponent saith—I cannot give the stations nor the different classes of work.

59. To the fifty-ninth cross-interrogatory, the said deponent saith—I don't know.

60. To the sixtieth cross-interrogatory, the said deponent saith—I don't know.

61. To the sixty-first cross-interrogatory, the said deponent saith—I am not.

62. To the sixty-second cross-interrogatory, the said deponent saith—Not that I know of.

63. To the sixty-third cross-interrogatory, the said deponent saith—I don't know.

64. To the sixty-fourth cross-interrogatory, the said deponent saith—By the washing of the embankment and the changes of the line. 10

65. To the sixty-fifth cross-interrogatory, the said deponent saith—I have not.

66. To the sixty-sixth cross-interrogatory, the said deponent saith—I can't say.

67. To the sixty-seventh cross-interrogatory, the said deponent saith—I can't say.

68. To the sixty-eighth cross-interrogatory, the said deponent saith—As it stood completed only.

69. To the sixty-ninth cross-interrogatory, the said deponent saith—I don't know.

70. To the seventieth cross-interrogatory, the said deponent saith—I cannot.

71. To the seventy-first cross-interrogatory, the said deponent saith—I do not know. 20

72. To the seventy-second cross-interrogatory, the said deponent saith—I cannot say.

73. To the seventy-third cross-interrogatory, the said deponent saith—I cannot say.

74. To the seventy-fourth cross-interrogatory, the said deponent saith—I cannot.

75. To the seventy-fifth cross-interrogatory, the said deponent saith—I cannot say.

76. To the seventy-sixth cross interrogatory, the said deponent saith—I think there was, but cannot remember the quantity. It was trifling.

77. To the seventy-seventh cross-interrogatory, the said deponent saith—I don't remember.

78. To the seventy-eighth cross-interrogatory, the said deponent saith—I don't 30 remember.

79. To the seventy-ninth cross-interrogatory, the said deponent saith—No.

80. To the eightieth cross-interrogatory, the said deponent saith—No. Borrow pits (if any) were close to the line.

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81. To the eighty-first cross-interrogatory, the said deponent saith—Yes.
82. To the eighty-second cross-interrogatory, the said deponent saith—The only papers I signed were exhibits B and C, as far as I now remember.
83. To the eighty-third cross-interrogatory, the said deponent saith—I did not.
84. To the eighty-fourth cross-interrogatory, the said deponent saith—Not to my knowledge.
85. To the eighty-fifth cross-interrogatory, the said deponent saith—He grumbled at the smallness of it.
86. To the eighty-sixth cross-interrogatory, the said deponent saith—They are made up from time and personal observations. The money which it amounts to is 10 turned into cubic yards.
87. To the eighty-seventh cross-interrogatory, the said deponent saith—Approximately I can.
88. To the eighty-eighth cross-interrogatory, the said deponent saith—Can't give any estimates without seeing the ground.
89. To the eighty-ninth cross-interrogatory, the said deponent saith—Yes.
90. To the ninetieth cross-interrogatory, the said deponent saith—No. I was not there then.
91. To the ninety-first cross-interrogatory, the said deponent saith—I think the contractors did suspend work. I don't know when it occurred, nor how long it lasted, 20 nor what was its cause.

(Sg'd) JOHN JILLET.

Sworn and examined and signed by the above named John Jillett, at Ottawa, in the County of Carleton, in the Province of Ontario, this twenty-fifth day of February, A. D., 1880.

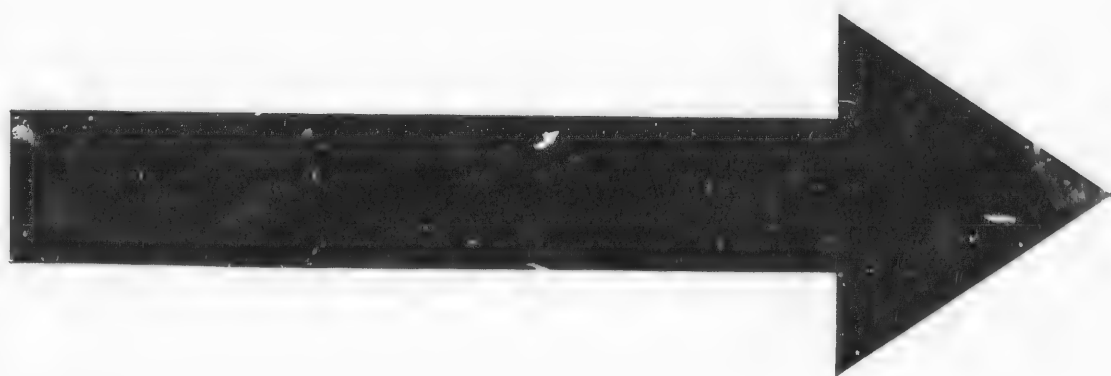
(Sgd.) J. J. GORMALLY,
 " G. LEFROY McCAUL,
Commissioners aforesaid.

4 p. m. Adjourned till Thursday, the 26th day of February, A. D., 1880, at eleven o'clock in the forenoon, at the same place. Adjournment notified to Mr. 30 O'DOHERTY and Mr. LAWRENCE.

(Sgd.) J. J. GORMALLY,
 " G. LEFROY McCAUL,
Commissioners aforesaid.

(Sgd.) J. J. GORMALLY, [L. s.]
Commissioner.

" G. LEFROY McCAUL, [L. s.]
Commissioner.



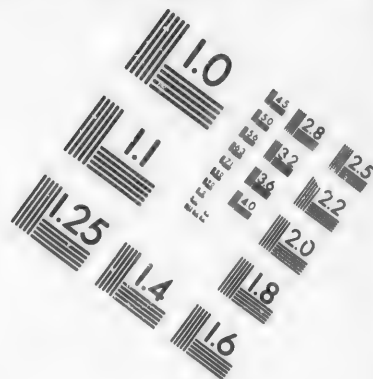
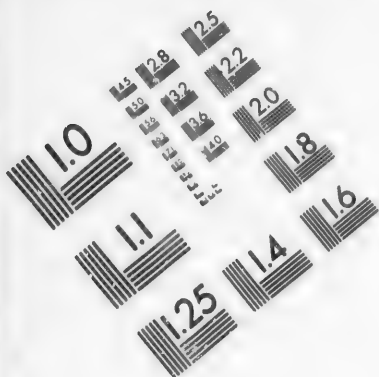
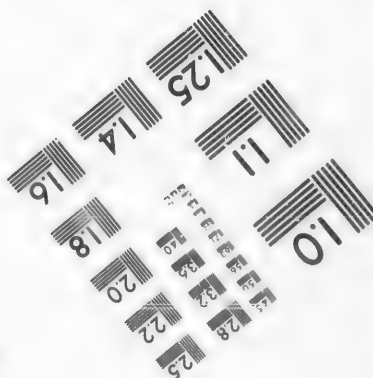
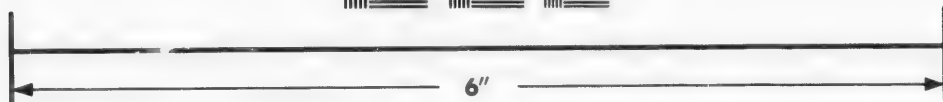
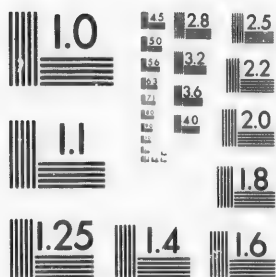


IMAGE EVALUATION TEST TARGET (MT-3)

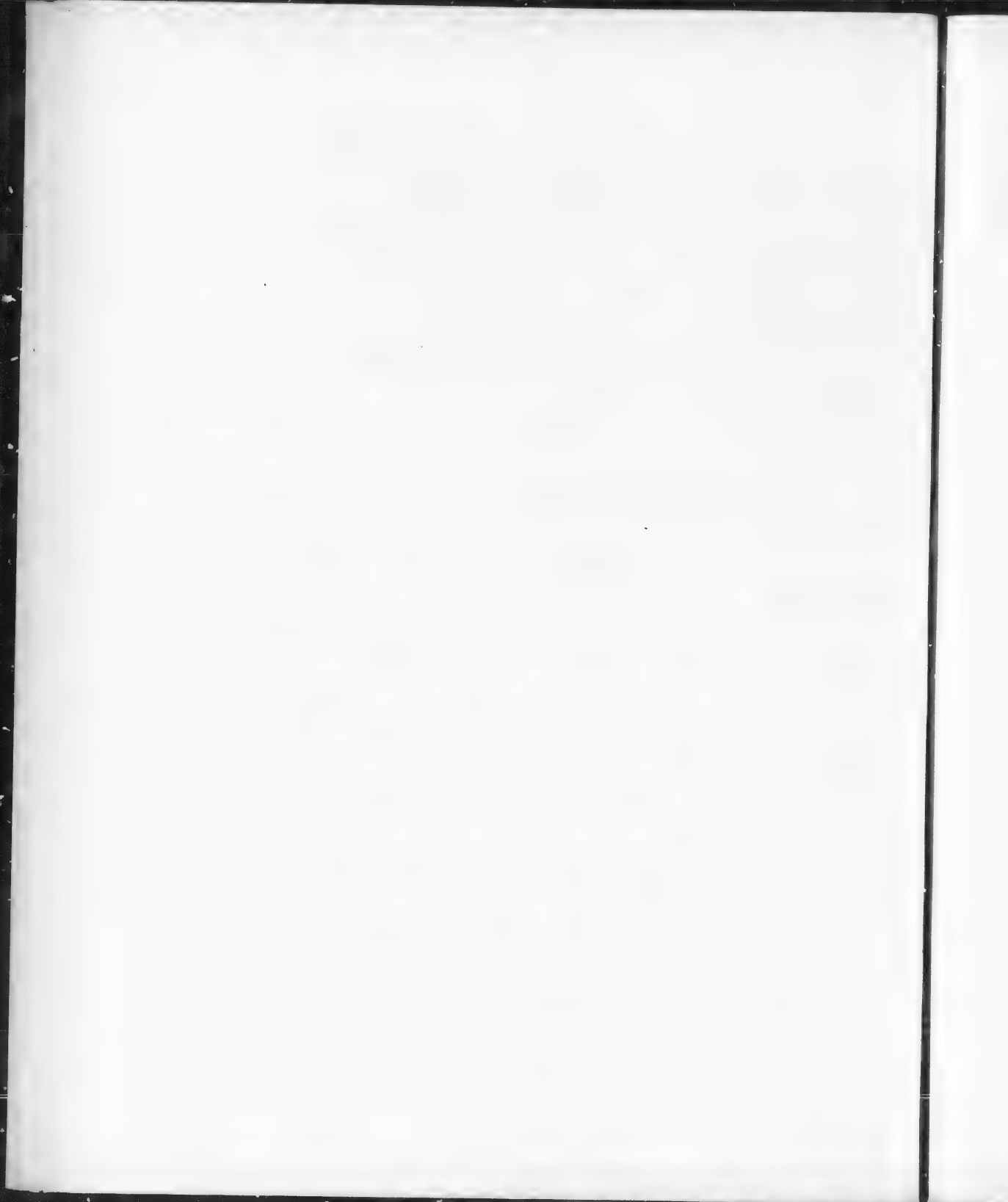


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HALIFAX, SS.

Insolvent Act of 1875, and Amending Acts.

IN THE COUNTY COURT, DISTRICT No. 1, COUNTY OF HALIFAX.

In the matter of the Estate of JOHN R. MURRAY, an Insolvent.

ALEXANDER McDONALD, *Claimant.*

AND

JAMES G. FOSTER, Assignee of said Insolvent, *Contestant.*

We, GEORGE JOSEPH O'DOHERTY, of the City of Ottawa, Province of Ontario, Esquire, Counsel on behalf of said Contestant, and FREDERICK A. LAWRENCE, of the Town of Truro, in the Province of Nova Scotia, Esquire, Counsel on behalf of said Claimant, hereby consent in writing, pursuant to the statute in that behalf, to the examination upon oath, *viva voce*, of the witnesses named in the margin hereof (all of whom reside out of the Province of Nova Scotia), before JOSEPH JAMES GORMALLY, of the said City of Ottawa, and G. LEFROY McCAY, of the same place, Esquires, Commissioners named in a certain commission issued in this matter, and dated the 17th day of February, A. D., 1880. And we do hereby further consent, that the Claimant and Mr. Robert P. Mitchell, of the City of Ottawa, contractor, may be present at such examination. And we further consent, that the evidence be taken in narrative form, except where either counsel asks for the question and answer to be taken down.

Dated at OTTAWA, this 26th day of February, A. D., 1880.

20

(Sgd.) G. J. O'DOHERTY,
Counsel for the Contestant.

(Sgd.) F. A. LAWRENCE,
Counsel for the Claimant.

And Counsel aforesaid hereby agree that the evidence taken under the foregoing consent may be used and read in evidence upon the hearing of this matter, and for all the purposes thereof, save and except all just causes of exception to the admissibility of the same as evidence.

(Sg'd.) G. J. O'DOHERTY,
Counsel for the Contestant. 30

(Sg'd.) F. A. LAWRENCE,
Counsel for the Claimant.



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HALIFAX, SS.

The Witnesses' Oath, administered upon the Holy Evangelists of Almighty God.

You do swear that your answers to the several questions now to be put to you shall be the truth, the whole truth and nothing but the truth. So help your God.

The above oath was duly administered by us to each of the following witnesses:
JOHN JILLET, LEONARD G. BELL.

(Sg'd.) J. J. GORMALLY,
" G. LEFROY McCAUL,
Commissioners.

On the twenty-sixth day of February, A.D., 1880, we, JOSEPH JAMES GORMALLY 10 and G. LEFROY McCAUL, acting under the annexed Commission, and JOSEPH MARTIN, Clerk, by us the said Commissioners employed in taking, writing and transcribing the depositions hereunder written, having heretofore duly taken the oaths annexed to the said Commission, according to the tenor thereof and as thereby directed, met pursuant to an enlargement made by us the said Commissioners at the office of Messrs. Stewart Chrysler & Gormally, at No. 10 Metcalf Street, in the city of Ottawa. Present—Mr. G. J. O'DOHERTY, Counsel on the part of the Contestant, and Mr. F. A. LAWRENCE, Counsel on the part of the Claimant, who by their consent hereto annexed consent in writing to the examination *viva voce* before us of the following witnesses:

JOHN JILLET and LEONARD G. BELL.

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Depositions of witnesses taken at Ottawa in Province of Ontario, *viva voce*, before us, JOSEPH JAMES GORMALLY (called in said Commission JOSEPH GEORGE GORMALLY) and G. LEFROY McCAUL, Esquires, both of Ottawa aforesaid, Barristers, Commissioners appointed for the purpose by a Commission issued out of the County Court and Court of Insolvency for the County of Halifax, Nova Scotia, in the matter of the estate of John R. Murray, an Insolvent, Alexander McDonald, Claimant, and James G. Foster, Assignee of said estate, Contestant, and which Commission is annexed hereto, and on consent in writing hereto annexed, that is to say:

JOHN JILLET, of the said city of Belleville, steamboat proprietor, a witness on behalf of the claimant, being duly sworn pursuant to the witnesses' oath hereto annexed, written in red ink, says as follows:

Examined by Mr. LAWRENCE—I am a steamboat proprietor now. I was a store-keeper before I began to work on the Intercolonial Railway. I had nothing to do with railroading before 1867. My connection with section 19 began after it was let to Mr. Tuck. I have seen the contract between Mr. Tuck and the Government, and think I have read it. Tuck did no work on the contract as far as I know. (Mr. O'DOHERTY here formally claims the benefit of objecting at the hearing of this matter and at all other times as to the admissibility and relevancy of the evidence or any part thereof taken hereunder, which the Commissioners hereby reserve to Mr. O'DOHERTY, as the Commissioners have no record before them, and therefore have no 40 means of judging as to the admissibility or relevancy of the questions.)

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I began as rod-man on section 19. I was in that position over a year. After that I acted as second assistant to Peter Grant. I was only a few months as second assistant when I was promoted to first assistant. These appointments come from the Railway Commissioners. The remainder of my service on section 19 was as first assistant to Mr. Grant. I think Mr. Grant had three or four other assistants beside me, but not engineer's except Mr. Cadinan who was there for a short time. These were all under me when I was first assistant. I did not remain up to the completion of section 19. I think I did not remain up to the completion of McDonald's subcontract. I was not on the works when the final measurement was made by Mr. Grant. I can't say that either Mitchell and Oakes or Thos. Boggs and Co. or Alex. McDonald or McKenzie, McDonald & Co. ever asked me to make Exhibit B. I don't remember. Alexander McDonald was the only member of the firm of McKenzie, McDonald & Co. who was on the work when Exhibit B was made. It was at the instance of Mr. Grant that I assisted in making Exhibit B. Since Exhibit B states that the measurements therein contained were made at the request of Thos. Boggs & Co., or their agents, Mitchell & Oakes, and of McKenzie, McDonald & Co., that must be true, as I would not have signed it otherwise. I won't swear it as a fact that these parties asked me personally to make this paper because my name is there. They did not ask me any other way than personally that I remember. I only assisted in making up Exhibit B. I don't think I made all the measurements from 20 which Exhibit B was made up. The other assistants made some of the measurements. I think Mr. Grant made some of the measurements. The assistants chiefly made the measurements. I don't remember whether any special measurement was made for Exhibit B, but I think there was. I think there was a special measurement made by myself and Mr. Grant for Exhibit B. I think we made a special measurement for the most of the work in Exhibit B. What we did not specially measure we took off the cross-sections. I don't remember whether I ever checked Exhibit B by progress estimates nor whether I compared Exhibit B with cross-sections. I will not swear that the part of Exhibit B taken from cross-sections agrees with cross-sections. I will not swear that the crib-wharfing in Exhibit B agrees 30 with the cross-sections. I think I specially measured the crib-wharfing. I never tested this special measurement by the cross-sections. I can't understand the figures 13,000, relating to crib-wharfing, in Exhibit B. I can't say whether it applies to washing. A special measurement of rip-rap was made for Exhibit B. I think it was done by me. Earth excavation was taken from cross-sections. Mr. Grant and I computed it. We arrived at rock excavations from both measurements and cross-sections. The measurement was made by me chiefly, that is, the progress estimates, which we used in part in making up Exhibit B. The progress estimates ought to be very close to the correct thing. They are, however, only approximate. I cannot say that Exhibit B is correct. I was not examined before Mr. Keeper, but I was examined before the Ex- 40 chequer Court. I did not make a final measurement or a general measurement of the whole of section 19. I can't tell the average height or width, or any estimate of length, of the crib-wharfing on section 19. The largest portion on section 19 was on McDonald's part. I think the area of crib-wharfing that I took was 130 or 132. Mr. Grant obliged me to adhere to that. I never prepared any estimate of the crib-wharfing on the whole section after it was completed. I can't give the height of the crib-wharfing above high-water mark, nor the depth of water, nor the average length of timber used.

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I think there was some crib-wharfing done that was carried away. I think I did not give McDonald credit for this. McDonald had to take down some crib-wharfing because the sticks were too short, and because there was not enough of excavation. Sticks averaged from 6 to 8 feet at the top; some less than that. Nature of the locality would not matter as to the top. I don't remember whether I made a special measurement with regard to rip-rap, for masonry or not, for Exhibit B I can't say anything about the measurement of the masonry. Mr. Grant did that. I depended on him or some other person for that. The wing walls are to protect the embankment around the masonry. I don't know whether the wing walls were called rip-rap or masonry in Exhibit B. I can't say whether there was any rock excavations at stations 306 to 310. I recollect 10 Man's Brook. It was not all rock. There was a culvert made at Man's Brook, which was on McDonald's contract; it was nearly solid rock. I don't know how that was returned; I forget. McDonald did some paving. I don't know how it was put in. Archibald & Vosburg did work on McDonald's part before he began. Their work was chiefly earth, but there was some rock. I don't know who measured the road diversions. I can't say that Exhibit B gives the right measurement of road diversions. I think Grant did it. McDonald complained at different times of not getting full measurements of progress estimates. He complained for several months. I used to give him tickets of the amount of the work done by him for progress estimates. I had no authority for 20 this. I did at his request and at the request of the contractors. I took these tickets off the progress estimates for the month. I kept one of the duplicates of Exhibit B until yesterday. The other was given to Mr. Grant. I can say nothing further about the correctness of Exhibit B. I did not measure the work while I was rodman, but I checked it with Mr. Grant. I checked the measurement from the data in the office. I think Mr. Grant measured it. After I was promoted I did not always measure it. When I did not do it, Mr. Grant and others did it. I did not always measure it even when I was there. I can't say whether Mr. Grant did the part I did not do. When I was away I don't know who measured it. It would be Mr. Grant's duty to look after the measurement when I was away. There was no one else to measure it but myself and Grant. There were some places which could not be measured for the progress 30 estimates on account of snow. This would sometimes happen on McDonald's part. We would then dig holes in the snow and use force returns for the progress estimates. Any mistakes thus made would be corrected as soon as a progress estimate was made, after the snow went off, by actual measurement.

Cross-examined by MR. O'DOHERTY.

MR. LAWRENCE here takes the same objections to the admissibility and relevancy of the evidence as taken by O'DOHERTY, and the Commissioners reserve to MR. LAWRENCE the same right.

The measurements that I did not make were chiefly made by Mr. Grant. In regard to the measurement of the road diversions, I considered it correct at the time 40 when I checked it over. Before I went on this contract of McDonald, I was engaged for over two years as a rodman. I had some experience in making calculations, but not in laying out work, before I came to McDonald's contract. I had some experience in plotting cross sections, but not in making measurements before I came there. Exhibit B was made as a final settlement up to that date between the parties to it.

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Exhibit B was got up by me with the best intentions and with the best knowledge I had. We always checked the height and width of the crib-wharfing as the works went along. I suppose we did the same with regard to the rip-rap. (MR. O'DOHERTY asks the witness to refresh his memory by looking at a document called a profile. The witness swears that the document in question is a tracing made by himself from the original profile, in Metapedia, used by the engineers of the Government there, but that there are figures and marks in it now that were not there when he made it, and that he delivered such tracing to the contractors. MR. LAWRENCE objects to the witness refreshing his memory from the document. We allow the witness to look at the document, and note in the margin thereof the words "Objected to" against all the evidence given by the witness whilst refreshing his memory from this document.) 10

[I recollect the rock cutting between stations 233 and 238. McDonald used the greater part of the rock from there in building crib-wharfing and rip-rap about station 250. McDonald picked rocks from the shore to build the greater portion of the rip-rap at or near stations 225 and 233. I remember rock cutting at stations 300 and 305. This was made wider by McDonald than necessary or ordered. He did so in order to get rock to use in masonry on his contract. The Government did not require him to widen it. McDonald picked up rock from the beach for part of the rip-rap at stations 281 and 286. I don't remember who built the bridge and rip-rap at Gilmore's Brook.]—(Objected to.) 20

Re-examined by MR. LAWRENCE.—The rip-rap built at stations 250 with rock from 233 and 238 was done by the orders of the engineers. McDonald had the privilege of picking rock from the shores for rip-rap at or near stations 225 and 233.

Re-cross examined by MR. O'DOHERTY.—The permission to use rock from different places for rip-rap was given by the engineers to the contractors when the contractors thought they could make more money by it. I don't think there was any rock wasted at stations 233 and 238. All the rock from stations 233 and 238 was not used for rip-rap, they put a portion of it in the embankment. The part not put in embankment was used for rip-rap. There was none wasted unless putting it in embankment might be considered so. They probably put the work in the embankment instead of making rip-rap with it because they thought it would be cheaper to pick up the round stones on the shore for rip-rap. There was only a small portion of rock from 233 to 238 put in embankment. There was rock enough from the cuttings at stations 233 and 238 to build crib wharfing and rip-rap at stations 250 and at station 233 and at station 225. 30

Re-examined on re-cross examination by MR. LAWRENCE.—I cannot say whether McDonald or Vosburg and Archibald put the portion of rock taken from 233 and 238 as aforesaid in the embankment.

(Sg'd.) JOHN JILLET.

Sworn and examined and signed by the above named John Jillett at Ottawa, in 40 the County of Carleton, in the Province of Ontario, this 26th day of February, A. D., 1880.

(Sg'd.) J. J. GORMALLY,

" G. LEFROY MCCAUL,

Commissioners.

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26TH FEB'Y., A. D., 1880.

Commission adjourned at 5 p. m. till 10.30 a. m. on the 27th February, A. D., 1880.

J. J. GORMALLY,
G. LEFROY McCAUL,
Commissioners.

27TH FEB'Y., A. D., 1880.

Commission met pursuant to adjournment at same place, Mr. LAWRENCE and Mr. O'DOHERTY present.

"B"—J. W. J.

LEONARD G. BELL, of the Village of New Edinburgh, in the County of Carleton 10 and Province of Ontario, Civil Engineer, appears on behalf of the Claimant, being duly sworn pursuant to the witnesses' oath hereto annexed, written in red ink, says as follows:

Examined by Mr. LAWRENCE—My residence is in the village of New Edinburgh, in the County of Carleton and Province of Ontario, and I am a Civil Engineer. I have been in the profession over thirty years. I was connected with the Intercolonial Railway at one time as district engineer over the Restigouche district; that included section nineteen (19). I was in that capacity nearly two years while section 19 was being constructed. Peter Grant was in charge of section 19 under me. I have examined cross-sections of work performed on section 19. I have made computations 20 of crib-wharfing performed on section 19. I know Alexander McDonald. I knew that he was connected with section 19. I have no definite knowledge of the part of section 19 that McDonald had to do, and therefore do not know the proportion of crib-wharfing done by him. I reduced a computation of the crib-wharfing writing. (A paper marked Exhibit D is here put in.) Exhibit D has been compared by me with the original computation of crib-wharfing made by me, and I am satisfied that it is a true copy of the same. I used the original of Exhibit D in evidence before the arbitrator in the suit of Murray vs. The Queen. The original computation belongs to the papers in the Intercolonial Railway office connected with section 19. I made the original of Exhibit D from cross sections made by Mr. Grant or under 30 his direction. These cross sections ought to have shown the total amount of work done on the sections. Exhibit D shows the stations at which the work was done according to the said cross-sections. I gave evidence in the matter of section 19 before Mr. Keeper, the arbitrator in Murray vs. The Queen. I left the Restigouche district in May, 1874, but my official connection had been severed with it in December, 1873. I used to visit the work on section 19 very frequently. My chief duties in respect of section 19 were to see that the work was properly performed. The cross sections I have referred to, show earth excavations, embankments, rock excavations, crib-wharfing, I think the rip-rap also. The masonry is not shown. I made the original of Exhibit D after contract 40 19 was completed, in June, 1877. Exhibit D shows first the station, then cross sectional area, then the average area between stations, then the length between stations, then the number of cubic feet between stations; at the foot I have given the total crib-wharfing as 53,041 cubic yards in one of my calculations in Exhibit D. I know

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Mr. James O'Dell, a civil engineer. I think I compared Exhibit D with a computation made by O'Dell. I think two of my calculations in Exhibit D were greater than his. An engineer can compute embankments and cuttings from the cross sections and the stations where these occur are laid down in the cross sections. I have looked at the plans of masonry done on section 19. These ought to show the whole quantities of masonry done. I identify Exhibit E (which is here put in) as the original computation of the crib-wharfing made by me. I know that Grant made a final estimate of work done on section 19. I have examined this estimate. I could not understand this estimate. I think I have seen the contract between Tuck and the Crown, and I have probably seen the contract between Boggs & Co. and the Crown, 10 but I am not sure. In my returns to Mr. Fleming I depended on the data given me by Mr. Grant. I could not understand Mr. Grant's final estimate in order to bring out any definite result.

Cross-examined by Mr. O'DOHERTY—I cannot say, as a matter of fact, that the cross-sections shew the exact amount of work, but they ought to show it. I do not, of my own knowledge, know that the cross-sections from which I made computation of the crib-wharfing shewed the exact amount of work done. If two or three feet were taken off the crib-wharfing after the cross-sections were made they would not then shew the correct amount of crib-wharfing. They would not then be proper cross-sections. I do not know, of my own knowledge, whether the cross-sections from which I made Exhibit E were made after or before the work was done. If one engineer made calculations 20 from cross-sections and another from actual measurement, the calculation made from cross-sections would be more likely to be right, assuming that the cross-sections actually represent correct field work, the cross-sections at first prepared would represent the correct surface of the ground at the bottom of embankments, and also the correct outline of embankment and crib-wharfing. Then the calculation of the crib-wharfing and embankments from these cross-sections would be more likely to be correct than field measurements made after the work was completed, assuming that the engineers making such measurements did not make use of the original cross sections. I can't say, of my own knowledge, whether the cross-sections from which I made the calculations of crib- 30 wharfing were correct or not. There was more than one set of cross-sections, and there was a variance between the different sets of cross-sections and both would not shew the same amount of work. I did not measure the work on section nineteen. Exhibit E was made by me at Ottawa. The figures in Exhibit E were made by me. The last page in pencil, headed "Petitioner's Exhibit," I do not now understand, although the figures are mine. This page has no connection with the computation. I don't know when the work of section nineteen was completed; but think it might have been completed at the end of 1874. I made exhibit E at the request of Mr. Schrieber, I think; but am not sure; I must have had some authority for it; I must have had Mr. Schrieber's authority, as I was in his office talking over the 40 matter with him. I got the cross-sections from which I computed exhibit E from a box containing the plans and papers of section 19. I don't know of my own knowledge whether these cross-sections were the correct ones or not. I don't know whether the government accepted my computations as correct or not. I do not know whether Mr. Keeper allowed Mitchell and Oakes the amount shown by my calculations. I would not have done so, as I do not think they were entitled to it. I made three sets of cal-

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culations which appear in exhibit E. The totals of these are, respectively, 53,041 cubic yards, 49,726 cubic yards and 39,392 cubic yards; these are from the whole of section 19. I think the contractors should have been paid according to the last sum, viz.: 39,392 cubic yards; I think this because Mr. Grant gave me to understand that the crib-wharfing was executed with a batter in the back of 1 to 1, and not plumb in the back as the first calculation assumes; the cross-sections do not show the batter 1 to 1; so if the crib-wharfing has a batter 1 to 1, the cross-sections do not represent the work correctly in that respect. I base my idea of this matter on what Mr. Grant told me about the crib-wharfing. I believe the first calculation was from assumed plumb back and length from cross-sections; the second calculation was from Mitchell and Oakes' 10 statements, and an assumed blumb back; and the third one was Mitchell and Oakes' lengths, with a batter of 1 to 1 as represented by Grant to me. In stating that I take the lengths from Mitchell and Oakes in the second and third calculations, I give them credit for 300 feet length, as stated in exhibit E.

(Signed) LEON'D G. BELL.

Sworn and examined, and signed by the above named
Leonard G. Bell, at Ottawa, in the County of Carleton, in the Province of Ontario, this twenty-seventh day of February, A. D. 1880.

J. J. GORMALLY,
G. LEFROY McCAUL,
Commissioners.

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27th February, A. D. 1880, at 1 p.m., the Commissioners adjourned to 4.30 p.m., at the same place, to allow Counsel to consider whether they desired to call any more witnesses.

J. J. GORMALLY,
G. LEFROY McCAUL,
Commissioners.

Mr. O'DOHERTY on behalf of the Contestant, and Mr. LAWRENCE on behalf of the Claimant, met at the same place at 4.30 p. m., on the 27th February, A. D., 1880. 30 Mr. LAWRENCE stated to the Commissioners that he did not desire to call any more witnesses. Mr. O'DOHERTY then stated that he was desirous of re-calling Mr. Peter Grant, who had been examined upon interrogatories and cross-interrogatories. Mr. LAWRENCE refused to consent to such examination. Thereupon, the Commissioners, considering that they had no power to act except by consent of parties, closed the evidence.

J. J. GORMALLY,
G. LEFROY McCAUL,
Commissioners.

And I, JOSEPH JAMES GORMALLY, do certify that the annexed consent to examine witnesses *viva voce* herein was drawn by me in the form it now appears, so that Mr. Jillett 40 might be examined at once without waiting until Mr. O'DOHERTY received instructions

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from the Attorneys at Halifax who employed him. That it certainly was intended, as I understood the agreement between Mr. O'DOHERTY and Mr. LAWRENCE, that if Mr. O'DOHERTY, after receiving instructions, consented generally to witnesses being called on behalf of the claimant (which Mr. O'DOHERTY was ready to do and did) that Mr. LAWRENCE would also consent to witnesses being called generally on behalf of the contestant.

J. J. GORMALLY,

Commissioner.

OTTAWA, 27th February, A. D., 1880, at 4.30 p. m.

Commission closed at 5 p. m. on the 27th day of
February, A. D., 1880.

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J. J. GORMALLY,

G. LEFROY McCAUL,

Commissioners.

EXHIBIT "D."

No. 9.

I. C. R.

Contract No. 19—Calculation of Crib-wharfing as executed.

Station.	Area.	Mean Area.	Length.	Cub. Yds.
356	0	0	0	
355-46	185	92	54	5968
355	115	250	46	6900
654	350	232	100	23200
353	330	340	100	34000
352	300	315		31500
351	315	307		30700
350	335	325		32500
349	255	295		29500
348	290	272		27200
347	315	303		30300
346	315	315		31500
345	370	342		34200
344	390	380		38000
343	390	390		39000
342	315	352		35200
341	235	290		29000
340	135	200		20000
339	100	118		11800
338	0	50	100	5000
				3)494468
				9)164823
				18314 c.y.

Station.

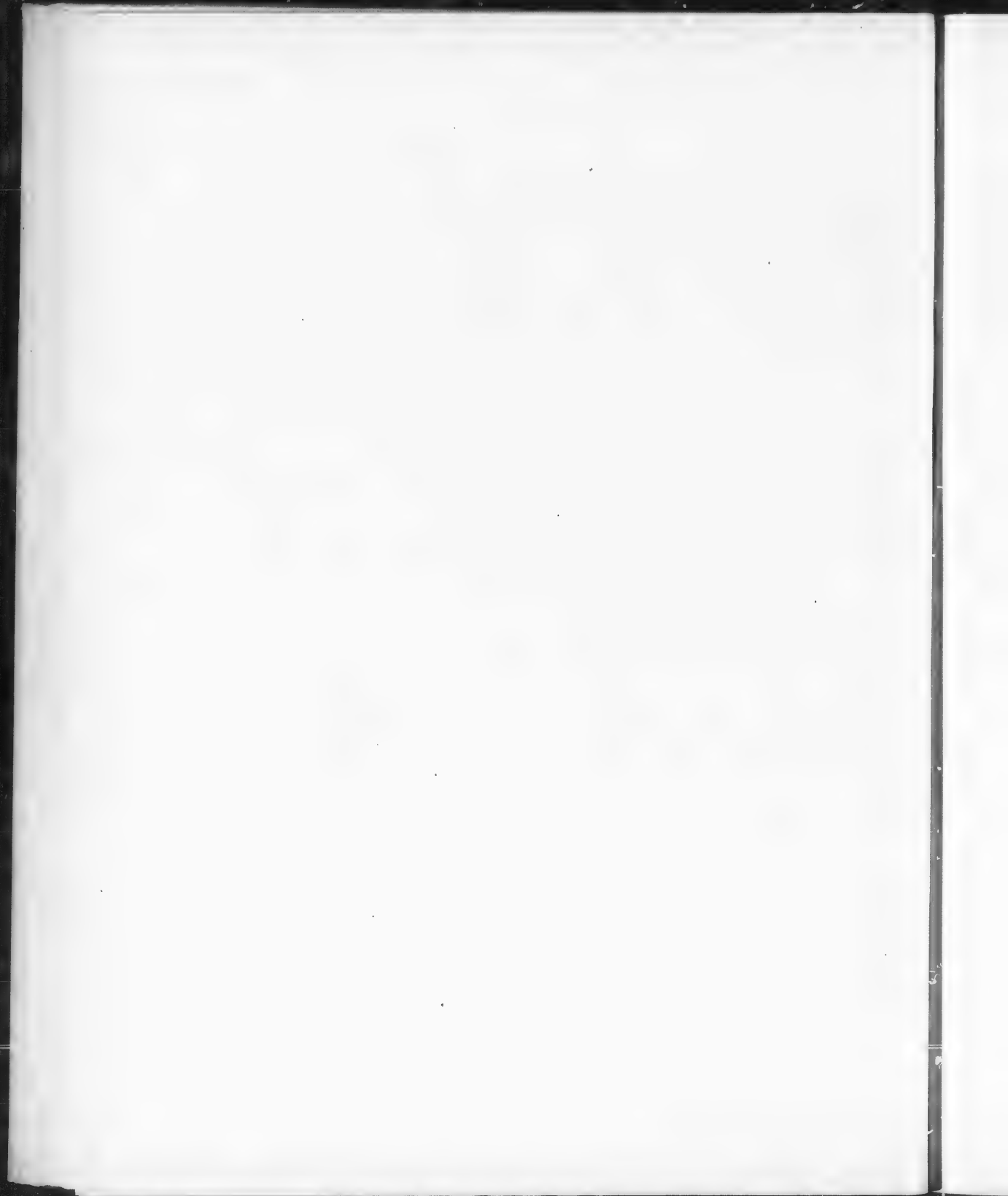
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Crib-wharfing on Contract 19, as executed.

Station.	Area.	Mean Area.	Length.	Cub. Ft.
335	0		100	
334	260	130		
333	390	325		
332	230	310		
331	235	232		
330	125	180		
329	0	62	100	
				3)123900 10
				9)41300
				4590 c.y.
318	0		100	
317	195	98		
316	280	238		
315	270	275		
314	265	268		
313	285	275		
312	230	258		
311	300	265		
310	140	220		20
309	280	210		
308	235	258		
307	130	182		
306	260	195		
305	0	130	100	
				3)287200
				9)95733
				10637 c.y. 30
270	0			
269	185	93	100	
268	210	198		
267	140	175		
266	255	198		
265	135	195		
264	280	208		
263	240	260		
262	255	247		
261	260	258		
260	250	255		
259-50	275	262	50	208700
259	230	252	50	13100
258	0	115	100	12600
				11500
				3)245900
				9)81970
				9108 c.y.



Crib-wharfing on Contract 19, as executed.

Station.	Area.	Mean Area.	Length.	Cub. Ft.
252	0			
251	290	145	100	
250	280	285		
249	205	242		
248	235	220		
247	0	118	100	
				3)101000
				9)33667
				3741 c.y. 10
92	0			
91	175	88	100	
90	270	222		
89	265	268		
88	200	233		
87	0	100	100	
				3)91100
				9)30367
				3374 c.y.
84	0			
83	125	63	100	
82	195	160		
81	250	222		20
80	225	238		
79	85	155		
78	0	42	100	
				3)88000
				9)29333
				3260 c.y.
Totals.				30
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4590				
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9108				
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3260				
53041 c.y.				
				In Bill of Works.
				40000 c.y.

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CONTRACT 19.—Crib-wharfing as executed.

To be deducted according to lengths given in Petitioner's Exhibit.

Stations.	
339.50 to 338	5,900
	5,000
335.50 to 356	4,625
	<u>15,525 = 575 c. y.</u>
334 to 335	13,000 c. f.
329 to 429.50	1,550
	<u>14,550 = 540 c. y. 10</u>
270 to 269.30	4,200 c. f.
259 to 258	11,500
	<u>15,700 = 581 c. y.</u>
252 to 247	<u>3,741 c. y.</u>
92 to 91	8,800 c. f. 26 c. y.
84 to 83	6,300 c. f.
79 to 78	4,200
	<u>10,500 = 389 c. y.</u>
	6,152 c. y.
	<u>53,041 20</u>
	<u>46,889</u>

*CONTRACT 19.—Crib-wharfing as executed, taking lengths as given by
Mitchell and Oakes.*

New measurement and calculation from cross-sections.

Stations.	Cub. Yds.	Cub. Yds. M. & O.
79 to 83	2,926	4,249
87 to 91	3,074	5,384
251 to 248	2,777	not in M. & O. acct.
259 to 269.30	8,737	9,131
305 to 317.90	10,407	9,627 30
329.50 to 334	4,083	3,828
339.50 to 355.50	17,722	10,560
	<u>49,726</u>	<u>42,779</u>
If 251 to 248 be left out according to M. & O. account. }	<u>2,777</u>	
	<u>46,949</u>	

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By third measurement with back of crib wharfing, 1 to 1, as described by Grant.

79	to 83	2,370 c. y.
87	to 91	3,074
251	to 248	2,963
239	to 269.30	6,300
305	to 317.90	8,426
329.50	to 334	3,333
339.50	to 355.50	12,026
		39,292 c. y.

Petitioners' Exhibits.

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P. Rip-Rap.	C. Y.	Stn.	
Sta'n. 479	344	171	6109
494	33	191	165
495.77-500	1910	225-226	255
521-530-35	2078	226	125
50.35-55	413	231-234	137
55-58	267	242-247.40	831
60-62	75		2794
62-68	13	278	30
94-96	195	287	752
109-113	711	295	367
125	33	375	422
131	54		
6109		Total.. 11987 c. y.	

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	C. W.		
79-83	4	4249	
87-91	4	5384	
259-269.30	1030	9131	
305-217.90	1290	9627	 40000 at 70c.
329.50-334	450	3828	 2779 at \$2.50.
339.50-355.70	1600	10560	
5170		42779 c. y.	5170 c. f

Special protection at Fraser's Flat.....\$7825.80

SECTION 19.—C. W. 40060 at 70c.

" 2779 at \$2.50.

Protection F. \$7825.80.

EXHIBIT D.

This is Exhibit D, referred to in the *viva voce* examination of Leonard G. Bell, taken before us in this matter at Ottawa, this 27th day of February, A. D., 1880.

J. J. GORMALLY,
J. LEFROY MCCAUL,

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EXHIBIT "E."

OFFICE OF THOMAS BOGGS & CO.,
HALIFAX, N. S., June 14, 1872.

Israel Longworth, Esq.:

DEAR SIR,—

The bearer, Mr. Alexander McDonald, has taken a sub-contract from us on our section (No. 19) of the Intercolonial Railroad at Metapedia, and, as security, wishes to give us a confession of judgment, which you will please have executed in our favor, for the sum of ten thousand dollars. Please have it recorded, as is customary with such documents. If a mortgage on his property is any better security, Mr. McD. 10 will give it for our benefit.

Truly yours, &c.,

THOMAS BOGGS & CO.

EXHIBIT "T."

From station 247 to 259 there is 10,000 cubic yards of crib-wharfing backed up by say 17,000 cubic yards of embankment, to fill which there is a cutting of say 5,000 cubic yards, showing about 12,000 of borrowing.

From 341 to 355+50 there is about 7,000 cubic yards of wharfing, backed up by say 30,000 cubic yards of embankment, of which say 29,000 cubic yards are from line cuttings—as this would be too long to haul, say 15,000 of this will be of spoil and say 20 15,000 cubic yards to borrow.

EXHIBIT "V."

HALIFAX, May 9th, A. D., 1876.

To Alexander McDonald, Oldham:

SIR,

Take notice that on Saturday, the twentieth day of May, instant, at three o'clock in the afternoon of that day, we will be at Clarke's Brook on section nineteen of the Intercolonial Railway with a competent engineer ready to proceed with the measurement of the work done by you upon said section under your control with us; and further take notice that we will then forthwith proceed with said engineer and duly measure the said work done by you upon said contract. We give you this notice 30 so that you may be present at such measurement.

Yours, &c.,

MITCHELL & OAKES.

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EXHIBIT "X."

OFFICE OF THOS. BOGGS & Co.,

HALIFAX, N. S., 11th June, 1873.

Mr. Alexander McDonald:

DEAR SIR,

We were very sorry to hear that you found it necessary to discharge Ward. We had advanced his wife ten dollars before we received your telegram. We have sent another young man to Mitchell and Oakes, and have sent instructions by him to Mosher to go up and take charge of our store. We have also asked Charles Archibald to help him, if necessary, to get your books properly arranged. We are glad to be able to inform you that we have bought Davis out of the concern. We gave him four hundred dollars. You may thank Oakes for it, although, of course, he does not wish it to be known that he had anything to do with it; it was done in our name. We hope, now you will have everything to look after yourself, you will get along better.

We received a telegram on Monday from Commrs. stating that May warrant will not be paid till 17th inst., so you will not get it till 4 or 5 days after that. Be sure you get Mr. Grant to allow you for the cement this month and give us all you can, as we have a large sum to remit to England about the middle of next month.

Truly yours,

THOMAS BOGGS & CO., 20

EXHIBIT "B. B."—J. W. J.

This Indenture, dated at Metapedia, in the Province of Quebec, this fifth day of August, in the year of our Lord, one thousand, eight hundred and seventy-three.

Witnesseth, that we, John C. McKenzie, Alexander McDonald and Frankfort Davis do release and deliver unto Messrs. Mitchell and Oakes, of Metapedia, all our right, title and interest in that portion of our work on section number nineteen of Inter-colonial Railway, beginning at station number three hundred and thirty-seven and extending westerly to end of said section. This is to comprise all the work on said portion of section number nineteen, excepting the building of masonry, free from all action of damages or charges that may be brought against said work, and commencing at the 30 date when W. H. McKiel commenced work at said place, to wit, the twelfth day of November, last.

McKENZIE, McDONALD & CO.,
ALEX. McDONALD.

Witness—

C. S. ARCHIBALD.

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THE
UNIVERSITY
OF
ALABAMA
AT
BIRMINGHAM

EXHIBIT "C C."—J. W. J.

Articles of agreement made and concluded this, the first day of October, in the year of our Lord, one thousand, eight hundred and seventy-three, between Mitchell & Oakes, of Metapedia, in the Province of Quebec, railway contractors, of the first part, and McKenzie, McDonald & Co., of Metapedia, aforesaid, railway contractors, of the second part.

Whereas, the said parties of the second part having contracted with the said parties of the first part to construct a portion of their contract on section number nineteen of the Intercolonial Railway of Canada ;

And whereas, the said parties of the second part, having become embarrassed in 10 their business and unable to prosecute their work with sufficient energy, have and do hereby deliver unto the said parties of the first part all the plant, stock and material on said work and the full control and management of same, with power to take possession of and complete said work in every particular, as specified in the contract hereinbefore referred to, they, the said parties of the second part, paying monthly unto the said parties of the first part, out of the monthly warrants for said work or otherwise, a sum equal to the monthly expenditures for the completion of said work.

In witness whereof, the parties to this agreement have hereunto set their hands and seals.

Signed, sealed and delivered
in presence of

C. S. ARCHIBALD.

MITCHELL & OAKES [L. s.]

McKENZIE, McDONALD & CO. [L. s.]

(Per A. McD.)

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EXHIBIT "H H."—J. W. J.

This indenture, made this second day of August, in the year of our Lord, one thousand, eight hundred and seventy-one, by and between Thomas Boggs and John Robert Murray, both of the City of Halifax, in the Province of Nova Scotia, in the Dominion of Canada, Iron-mongers, carrying on business there as co-partners in trade, under the name, style and firm of Thomas Boggs & Company, of the first part; Her Majesty Queen Victoria, represented herein by Aquila Walsh, Esquire, M. P., the Hon- 30 orable Edward Barron Chandler, Charles John Brydges, Esquire, and the Honorable Archibald Woodbury McLellan, Commissioners appointed under and by virtue of an Act of the Parliament of Canada, passed in the session thereof held in the thirty-first year of Her Majesty's reign, entitled, "An Act respecting the construction of the Intercolonial Railway," hereinafter designated as "the Commissioners," of the second part; Samuel Parker Tuck, of the City of Saint John, in the Province of New Brunswick, in the said Dominion, Civil Engineer, of the third part; William Frederick Harrison of the said City of St. John, Merchant, and Thomas Majoribanks Reed, of the City of Saint John, Druggist, of the fourth part, and Robert Peter Mitchell, of the Town of Truro, in the County of Colchester, and said Province of Nova Scotia, and Stephen Delancy Oakes of the said City of Halifax, Railway Contractors, of the fifth part. 40

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Whereas, by indenture bearing date on the fifteenth day of June, which was in the year of our Lord one thousand eight hundred and seventy, and made between the parties hereto of the third part, of the first part and Her said Majesty represented by "The Commissioners" of the second part, (a copy of which said indenture, with the schedule and tender for the construction of section No. 19, with the schedule thereon endorsed, thereto annexed, embracing in all seventeen pages, and to which the parties hereto of the first part have respectively set and subscribed their names, is to these presents annexed, marked A, and which is to be read and treated as part and parcel of these presents as if the same were embodied therein), the said party hereto of the third part contracted and agreed to and with Her Majesty, her heirs and successors, that he would well, truly and faithfully, make, build, construct and complete that portion of the said Intercolonial Railway known as "Section No. 19," more particularly therein described, in accordance with the terms of the said above in part recited indenture, of and for the price and consideration of three hundred and ninety-five thousand seven hundred and thirty-three dollars (\$395,733), the said "Section No. 19" to have been so built, constructed and entirely completed in every particular, and given up, under final certificate and to the satisfaction of "the Commissioners" and the Engineer of the said Railway, on or before the first day of July, which will be in the year of our Lord one thousand eight hundred and seventy-two, time having been declared in and by the said above in part recited indenture to be material and of the essence thereof.

And whereas the party hereto of the third part having been required to enter into, and give to Her Majesty his bond or writing obligatory with two good and sufficient sureties conditioned for the due performance of the said contract, the parties hereto of the fourth part became parties to and executed in conjunction with him the said party of the third part, such a Bond or writing obligatory, which bears even date with the said above in part recited indenture;

And whereas the said party of the third part did, after having so entered into the said contract and agreement hereinbefore in part recited contract, and agree with the parties hereto of the fifth part to do and perform the necessary work and labor and to furnish the necessary materials towards the performance and fulfilment of the said contract, and he the party of the third part hath through the instrumentality of the parties hereto of the fifth part up to this time, proceeded with the construction of the said "section No. 19" of the said Railway in accordance with the tenor of the said above in part recited indenture, and hath from time to time received sums of money in payment for the labor and materials by him through them done and furnished, in and towards such performance of his said contract, in all amounting to the sum of fifty-one thousand dollars (\$51,000.00), the same being a portion, and on account of the said sum of three hundred and ninety-five thousand seven hundred and thirty dollars, (\$395,733.00), the said original contract price thereof, and hath well and truly paid the said parties hereto of the fifth part for the work, labor and materials so by them done, performed and furnished, towards the completion of the construction of the said section No. 19 of the said Railway, the receipt whereof they do and each of them doth hereby acknowledge, and he the said party hereto of the third part is now anxious to surrender and yield up the further performance and completion of the said work;

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And whereas, The said parties hereto, of the first and third parts, have, by and with the sanction of the Governor-General in Council, first had and obtained, and with the assent of the respective parties hereto, of the first and second parts (such assent being testified by their respectively becoming parties to and executing these presents) agreed that the party of the third part shall surrender the said contract and all further benefit and advantage to be by him derived therefrom (as he hereby does to all intents and purposes); and that the parties hereto, of the first part, shall assume the further performance and completion of the said "section No. 19," in accordance with the terms of the said above in part recited indenture, at and for the price or consideration of three hundred and forty-four thousand seven hundred and thirty-three 10 dollars (\$344,733), the same being the residue of the said sum of three hundred and ninety-five thousand seven hundred and thirty-three dollars (\$395,733), the said original contract price for the said work, thus relieving the said parties hereto, of the third and forth parts respectively, of and from all liability whatsoever, under, upon and in respect of the said above in part recited indenture, and the Bond or writing obligatory above mentioned and referred to respectively; and, that to that end, the said hereinbefore in part recited indenture shall henceforth be, and be treated as cancelled and null and void to all intents and purposes, as between the respective parties thereto.

Now this Indenture witnesseth, That in consideration of the sum of three 20 hundred and forty-four thousand seven hundred and thirty-three dollars (\$344,733) of lawful money of Canada, to be paid to the parties hereto, of the first part, their executors, administrators and assigns by Her Majesty, her heirs and successors in the same manner as the same was, by the terms of said herein above in part recited indenture, to have been paid to the party thereto of the first part, they the parties hereto of the first part, Do, and each of them Doth hereby, for themselves and himself, and for their heirs, executors and administrators, covenant promise and agree to and with Her Majesty, her heirs and successors, that they the said parties hereto of the first part, or their executors or administrators shall and will, well and truly and faithfully, make, build, construct and complete all that and those portions of the said 30 railway known as "Section 19," more particularly described in and by the said above in part recited indenture, as may not have been already built, constructed and completed, and all the bridges, culverts and other works, appurtenances thereto, to the entire satisfaction of the Commissioners and according to the plans and specification thereof signed by the Commissioners and the party hereto of the third part, respectively, which said plans, so signed as aforesaid, are deposited in the office of the Commissioners in the city of Ottawa, and the specification whereof, also so signed and marked schedule A as aforesaid, having been annexed to and made part and parcel of the said above in part recited indenture. And, further, that the said parties hereto of the first part will forthwith proceed to and with the construction and completion of 40 the works embodied in these presents, and shall diligently and continuously prosecute and continue the same, observing, keeping and performing at all times during the prosecution of the said work all and every the provisos, conditions, stipulations and agreements and be liable to all the penalties in the event of default made by them, as expressed and contained in the said above in part recited indenture, and to have been observed, kept, performed, incurred and suffered by the said party thereto of the first part in the same manner in every respect as if all and every such provisos,

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conditions, stipulations and agreements were literally embodied in these presents; and that the same works respectively, and every of them, and every part thereof, shall be fully and entirely completed in every particular in accordance with the said above in part recited indenture, and given up under final certificate and to the satisfaction of the Commissioners and Engineer of the said Railway on or before the first day of July, which will be in the year of our Lord one thousand eight hundred and seventy-two, time being declared to be material and of the essence of this contract.

IN WITNESS WHEREOF, the said parties hereto of the first part have hereunto set and affixed their respective hands and seals, and the Commissioners acting herein on behalf of Her Majesty as aforesaid, have hereunto respectively set their hands and affixed their seals, on the day and year first above written. 10

Signed, sealed and delivered by the respective parties of the first, third, fourth and fifth parts in the presence of

(Sgd) GEO. A. ALLISON,

Witness to the signatures of

THOMAS BOGGS,
JOHN R. MURRAY,
SAMUEL P. TUCK,
WILLIAM F. HARRISON,
THOMAS M. REED,
ROBERT P. MITCHELL, and
STEPHEN D. OAKES.

(Sgd) THOS. BOGGS.

" JOHN R. MURRAY.

" A. WALSH.

" C. J. BRIDGES.

" A. W. McLELAN.

" S. PARKER TUCK.

" WM. F. HARRISON. 20

" THOMAS M. REED.

" R. P. MITCHELL.

" S. D. OAKES.

Signed, sealed and delivered by the Commissioners, in presence of

(Sgd) B. H. FOLEY,

As to the signature of A. WALSH.

Compared with the original and found correct,

THOMAS TAYLOR.

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DEPARTMENT OF RAILWAYS AND CANALS.

I hereby certify that the foregoing and annexed papers numbered and marked A 1 and B 2 are respectively true copies of the original contract for the construction of section number 19 Intercolonial Railway, made between Samuel Parker Tuck and Her Majesty Queen Victoria, and the original contract for construction of said section made between Thomas Boggs and John R. Murray and Her Majesty Queen Victoria, which said original contracts are filed in the Department of Railways and Canals, being one of the Departments of the Government of Canada.

Dated at the City of Ottawa, this third day of March, A. D., 1880.

T. TRUNDEAU,
Deputy Minister of Railways and Canals.

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EXHIBIT "K. K."—J. W. J.

This Indenture made this fifteenth day of June, in the year of Our Lord One Thousand Eight Hundred and Seventy between Samuel Parker Tuck, of the City of St. John, in the Province of New Brunswick, in the Dominion of Canada, Civil Engineer (hereinafter designated as "the contractor") of the first part, and Her Majesty Queen Victoria, represented herein by Aquila Walsh, Esquire, M. P., The Honorable Edward Barron Chandler, Charles John Brydges, Esquire, and The Honorable Archibald Woodbury McLelan, Commissioners appointed under and by virtue of an Act of the Parliament of Canada, passed in the session held in the thirty-first year of Her Majesty's reign, entitled, "An Act respecting the construction of the Intercolonial Railway," (hereinafter designated as the Commissioners,) of the second part.

Whereas, it was and is, in and by the said cited Act, amongst other things, enacted and provided, that there shall be a Railway constructed connecting the Port of Riviere DuLoup, in the Province of Quebec, with the line of railway leading from the City of Halifax, in the Province of Nova Scotia, at or near the Town of Truro, and that such railway shall be styled and known as "The Intercolonial Railway"; that such railway shall be a public work belonging to the Dominion of Canada, and shall be made with a gauge of five feet six inches, and on such grades in such places, in such manner, with such materials, and on such specifications, as the Governor in Council shall determine and appoint as best adapted to the general interests of the Dominion; and, further, 20 that the construction of the said railway and its management, until completed, shall be under the charge of four commissioners, with the powers and duties provided by the said Act, and whereas, the said Aquila Walsh, Edward Barron Chandler, Charles John Brydges and Archibald Woodbury McLelan have been duly appointed such commissioners, and in the duties imposed on them by the said Act, have been duly advertised for tenders for the construction of certain portions of said railway, including the portion hereinafter described and designated as "Section No. 19," and the tender of the contractors for the construction of such "Section No. 19," in the manner hereinafter set forth, has been accepted and the contractor has, in consequence, agreed (by and with the sanction of the Governor in Council, as provided in the said Act,) with the 30 commissioners to construct and complete the said "Section No. 19" of the said railway, and to supply all proper and requisite materials therefor upon the terms, and subject to the conditions, stipulations and agreements hereinafter contained.

Now this Indenture witnesseth, That in consideration of the sum of three hundred and ninety-five thousand seven hundred and thirty-three dollars (\$395,733) of lawful money of Canada to be paid to the said contractor, his heirs, executors, administrators and assigns by Her Majesty, her heirs or successors in manner hereinafter mentioned; he, the contractor, doth hereby, for himself and for his heirs, executors and administrators, covenant promise and agree to and with Her Majesty, her heirs and successors, in manner following, that is to say:—

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1. He, the contractor, shall and will well, truly and faithfully make, build, construct and complete that portion of the railway known as "Section No. 19," and more particularly described as follows, to wit:

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Commencing at the easterly end of Section No. 18 (section number eighteen) of the said railway, and extending thence down the Metapedia valley to its mouth; and thence across the River Restigouche to "Station No. 370" (station number three hundred and seventy) of the said railway, the same being at the westerly end of Section No. 3 of the said railway, the easterly end of the said "Section No. 18" being in the Province of Quebec, and the westerly end of "Section No. 3" being in the Province of New Brunswick, including the bridge over the said River Restigouche, the said "Section No. 19" being nine miles and one-third of a mile, more or less, in length, and all the bridges, culverts and other works appurtenant thereto to the entire satisfaction of the commissioners and according to the plans and specification 10 thereof, signed by the commissioners and contractor; the plans whereof so signed are deposited in the office of the commissioners in the City of Ottawa, and the specification whereof so signed is hereunto annexed and marked "Schedule A," which specification is to be construed and read as part hereof, and as if embodied in and forming part of this contract. But nothing herein contained shall be construed to require the contractor to provide the right of way for the construction of the railway.

2. The contractor shall be bound to provide all proper tools, plant and materials for the execution of the works, and shall be responsible for the sufficiency of the same; he shall take upon himself the entire responsibility of the centring, scaffolding and all other means used for the fulfilment of the contract, whether such means may or not be 20 approved of or recommended by the engineer, and the contractor shall alone suffer loss and shall indemnify and hold harmless Her Majesty and the commissioners from loss arising from, and shall run all risks of accidents or damages, from whatever cause they may arise, until the completion of the contract. The contractor shall also be responsible for all damages claimable by the owners and occupants of land arising from loss of crops or cattle, or injury thereto, respectively, sustained by any cause or thing connected with the construction of the work or through any of his agents or workmen, and he shall be responsible for all damage which may be done to property or persons through blasting of rocks or other operations carried on by them, and he shall assume all risks and contingencies that may arise during the progress of the works, and shall 30 make good all defects and failures, whether from negligence on the part of themselves or their agents or workmen, or from bad workmanship, or the use of improper materials, and he shall hold harmless and indemnify Her Majesty from all claims, losses or damages in respect thereof. The contractor shall, subject to the approval of the engineer as to the same, make all necessary temporary provisions during the progress of the works for the owners or occupants of lands crossing the line of railway, and shall provide the necessary accommodations for the passage of the public at the intersection of roads or highways, and shall also make such provision, until fences be erected, as may be necessary to prevent the straying of cattle upon the line of railway. In the event of any bad materials being delivered or 40 worked up or any bad work being executed at any time, the same shall be immediately removed on notice being given by the engineer, and the work shall be reconstructed at the expense of the contractor in strict conformity with this contract, and the said specification, and to the entire satisfaction of the engineer. The contractor shall employ as many competent agents, and foreman shall be regularly and constantly present on the works, for the purpose of effectually overseeing the same,

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and receiving instructions from the engineer. The contractor shall respect and preserve in their true and original position, all bench marks, hubs, all centre, slope reference and all other stakes and marks placed or made by the engineer on or near the line of work, and shall adopt every means in their means to prevent the same being burned in the clearing or altered, removed or destroyed at any time; and whenever required by the engineer, they shall furnish the necessary assistance to correct or replace any stake or marks which through any cause may have been removed or destroyed. The contractor shall not encourage, but shall take all lawful means in their power to prevent the sale of spirituous liquors on or in the vicinity of the railway. The contractor shall perform and execute all the works required to be performed by this contract and the said specification in a good, faithful, substantial and workmanlike manner, and in strict accordance with the plans and specifications thereof, and with such instructions as may be from time to time given by the engineer, and shall be under the direction and constant supervision of such district, division, and assistant engineers and inspectors as may be appointed. Should any work, material, or thing of any description whatsoever be omitted from the said specification or the contract which, in the opinion of the engineer, is necessary or expedient to be executed or furnished, the contractor shall, notwithstanding such omission, upon receiving written directions to that effect from the engineer, perform and furnish the same. All the works are to be executed and materials to be supplied to the entire satisfaction of the Commissioners and engineer, and the Commissioners shall be the sole judges of the work and material, and their decision on all questions in dispute with regard to the works or materials, or as to the meaning or interpretation of the specifications or the plans, or upon points not provided for or not sufficiently explained in the plans or specifications, is to be final and binding on all parties.

3. The contractor shall commence the works embraced in this contract within thirty days from and after the date hereof, and shall diligently and continuously prosecute and continue the same, and the same respectively and every part thereof shall be fully and entirely completed in every particular and given up under final certificate and to the satisfaction of the Commissioners and Engineer on or before the first day of July, in the year of our Lord one thousand eight hundred and seventy-two, (time being declared to be material and of the essence of this contract), and in default of such completion as aforesaid on or before the last mentioned day, the contractors shall forfeit all right, claim or demand to the sum of money or percentage hereinafter agreed to be retained by the Commissioners and any and every part thereof, as also to any moneys whatever which may be at the time of the failure of the completion as aforesaid due or owing to the contractor, and the contractor shall also pay to Her Majesty as liquidated damages, and not by way of fine or penalty, the sum of two thousand dollars (\$2000.00) for each and every week, and the proportionate fractional part of such sum for every part of a week, during which the works embraced within this contract, or any portion thereof shall remain incomplete, or for which the certificates of the Engineer approved by the Commissioners shall be withheld, and the Commissioners may deduct and retain in their hands such sums as may become due as liquidated damages from any sum of money then due or payable or to become due or payable thereafter to the said contractor.

4. The Engineer shall be at liberty at any time before the commencement or during the construction of any portion of the work to make any changes or alter-

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ations which he may deem expedient in the grades, the line of location of the Railway, the width of cuttings of fillings, the dimension or character of structures, or in any other thing connected with the works whether or not such charges increase or diminish the work to be done or the expense of doing the same, and the contractor shall not be entitled to any allowance by reason of such changes unless such changes consist in alterations in the grades or the line of location, in which case the contractor shall be subject to such deductions for any diminution of work, or entitled to such allowance for increased work (as the case may be) as the Commissioners may deem reasonable, their decision being final in the matter. The Engineer shall have full power to dismiss any foreman, workman or other person employed whom he may deem unfit for the duties assigned him, or who may in the opinion of the Engineer be guilty of slighting the work, or of wilful disobedience of orders, or improper, intemperate or disorderly conduct, and the contractor shall forthwith supply the places of all such men so dismissed, and shall not employ them again on the works. 10

5. The contractor shall by himself, his agents and workmen, faithfully carry on the works until completion, and shall not sell, assign or transfer this contract to any person or persons whomsoever without the consent of the Commissioners first had and obtained.

6. The Commissioners shall have the right to suspend operations at any particular point or points or upon the whole of the works, and in the event of such right being exercised so as to cause any delay to the contractor then an extension of time equal to such delay or detention shall be allowed him to complete the contract, but any such delay shall not vitiate or avoid this contract or any part thereof or the obligation hereby imposed or any concurrent or other bond or security for the performance of this contract, nor shall the same entitle the contractor to any claim for damages unless the Commissioners shall otherwise determine, and then only for such sum as they may think just and equitable. If at any time during the progress of the works it should appear that the force employed or the rate of progress then being made or the general character of the work being performed or the material being supplied or furnished are not such as to ensure the completion of the said works within the time stipulated or in accordance with this contract, the Commissioners shall be at liberty to take any part or the whole works out of the hands of the contractor, and employ such means as they may see fit to complete the works at the expense of the contractor, and he shall be liable for all extra expenditure incurred thereby, or the Commissioners shall have power at their discretion to annul this contract. Whenever it may become necessary to take any portion or the whole work out of the hands of the contractor, or to annul his contract, the Commissioners shall give the contractor seven clear days' notice in writing of their intention to do so, such notice being signed by the Chairman of the Board of Commissioners or by any other person authorized by the Commissioners, and the contractor shall thereupon give up quiet and peaceable possession of all the works and materials as they then exist, and without any other or further notice or process or suit at law or other legal proceedings of any kind whatever, or without its being necessary to place the contractor *en demeure* the Commissioners in the event of their annulling the contract may forthwith, or at their discretion, proceed to re-let the same or any part thereof or employ additional workmen, tools and materials as the case may be, and complete 40

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the works at the expense of the contractor, who shall be liable for all extra expenditure which may be incurred thereby, and the contractor and his assigns or creditors shall forfeit all right to the percentage retained and to all money which may be due on the works, and they shall not molest or hinder the men, agents or officers of the Commissioners from entering upon and completing the said works as the Commissioners may deem expedient. If at any time it should appear to the Commissioners that the security of the works is endangered, or the peace of the neighborhood is likely to be disturbed, or any other difficulty likely to arise by reason of the men being left unpaid, the Commissioners may pay any arrears of wages so far as they can ascertain the same to be due on the best information they can obtain, and charge the same as a payment on account of this contract. 10

7. Any notice or other paper connected with this contract may be served on the contractor by being left at his or their usual domicile, or by being directed to them, or either of them, through the post office at their, or his, last known place of business, and any notice or other paper so left or directed shall, to all intents and purposes, be considered legally served.

8. It shall be in the power of the Commissioners to make payments or advances on materials, tools or plant, of any description, procured for the works, or used, or intended to be used, about the same, in such cases and upon such terms and conditions as to the Commissioners may seem proper, and whenever any advance or payment shall be made to the contractors, as aforesaid, the materials, tools or plant, upon which such advance or payment shall be made, shall thenceforth be vested in, and held as collateral security by Her Majesty for the due fulfilment by the contractor of the present contract, it being, however, well understood that all such materials, tools or plant shall remain and be at the risk of the contractor, who shall be responsible for the same until finally used and accepted, or given up, by the Commissioners; but the contractor shall not exercise any act of ownership or control whatever over any materials, tools or plant upon which any advance or payment has been so made without the permission in writing of the Commissioners; and the Commissioners may retain and deduct any such payment from the amount payable to the contractor upon the next or any succeeding certificate thereafter. 20 30

9. It is distinctly understood, intended and agreed, that the said price or consideration of three hundred and ninety-five thousand, seven hundred and thirty-three dollars (\$395,733.00) shall be the price of, and be held to be, full compensation for all the work embraced in, or contemplated by, this contract, or which may be required in virtue of any of its provisions, or by law, and that the contractor shall not, upon any pretext whatever, be entitled by reason of any change, alteration or addition made in or to such work, or in the said plans and specification, or by reason of the exercise of any of the powers vested in the Governor in Council by the said Act entitled, "An Act respecting the construction of the Intercolonial Railway," or in the Commissioners or Engineer, by this contract or by law, to claim or demand any further or additional sum for extra work, or as damages or otherwise, the contractor hereby expressly waiving and abandoning all and any such claim or pretension to all intents and purposes whatsoever, except as provided in the fourth section of this contract. 40

10. In this contract and in the said specification, the words "Her Majesty" shall mean Her Majesty Queen Victoria, her heirs and successors. The words "The Com-

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missioners," shall mean the Commissioners for the time being, appointed under the herein first cited Act entitled, "An Act respecting the construction of the Intercolonial Railway." The words "The Contractor" shall mean the hereinbefore mentioned Samuel Parker Tuck and the heirs, executors and administrators of them, and each and every of them jointly and severally. The words "The Work" or "The Works" shall, unless the context require a different meaning, mean the whole of the work and materials, matters and things required to be done, furnished and performed by the contractors under this contract. The words "the Engineer" shall mean the Chief Engineer for the time being, appointed by the said Act entitled, "An Act respecting the construction of the Intercolonial Railway," and shall extend to and include any of his assistants acting under his instruction, and all instructions or directions given by those acting for the Chief Engineer, will be subject to his approval. The word "Railway" shall mean the said Intercolonial Railway. 10

The construction of the words given in this clause shall not control any more extended signification or construction which may be given to any such words in this contract or the said specification.

11. And it is further mutually agreed upon by the parties hereto, that cash payments equal to eighty-five per cent. of the value of work done, approximately made up from returns of progress measurements will be made monthly on the certificate of the engineer, and the work for or on account of which the sum shall be 20 certified, has been duly executed, and upon approval of such certificate by the commissioners on the completion of the whole work to the satisfaction of the engineer, a certificate to that effect will be given; but the final and closing certificate, including the fifteen per cent. retained, will not be granted for a period of two months thereafter. The progress certificates shall not, in any respect, be taken as an acceptance of the work or release of the contractor from his responsibility in respect thereof; but he shall, at the conclusion of the work, deliver over the same in good order according to the true intent and meaning of this contract and of the said specification.

12. This contract and the said specification shall be in all respects subject to the provisions of the herein first cited act, entitled "An Act respecting the construction 30 of the Intercolonial Railway;" and also in so far as they may be applicable to the provisions of "the Railway Act, 1868."

Provided always that if "the Commissioners" shall, at any time hereafter, think fit to substitute the erection of iron bridges for the bridges, or wooden superstructure specified in the general specification forming Schedule A of this contract, then, and in every such case, the Commissioners shall be at liberty to make such substitution at any time before "the Contractor" shall have commenced the actual laying of the foundation of masonry for receiving the superstructure; and in every such case the Commissioners, upon giving notice to the contractor of the intended substitution, may proceed to the procuring of the necessary materials for, and to the erection and com- 40 pletion of the superstructure of such iron bridges at the cost respectively of Her Majesty; and "the Contractor" shall thence be relieved from the necessity of erecting at such place or places the bridges or wooden superstructures as specified in the general specifications forming Schedule A of this contract; but in every such case the value of the wooden superstructures and the reduction in quantity or value (if

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any) of masonry consequent upon such substitution shall be deducted at the prices named for such description of work in the schedule hereunto annexed from the full amount herein mentioned as payable and to be paid for the performance of the work under this contract.

In witness whereof, the contractor has hereunto set his hand and affixed his seal, and "the Commissioners," acting herein on behalf of Her Majesty, have hereunto respectively set their hands and affixed their seals the day and year first above written.

Signed, sealed and delivered by the herein-
before named SAMUEL PARKER TUCK, in
presence of
(Sgd) JOHN A. MACDONALD.

(Sgd)	S. PARKER TUCK, [L.S.]	
"	A. WALSH, [L.S.]	
"	ED. B. CHANDLER, [L.S.]	10
"	C. J. BRYDGES, [L.S.]	
"	A. W. McLELAN, [L.S.]	

Signed, sealed and delivered by the four
Commissioners hereinbefore named in the
presence of
(Sgd) JOHN STUART.

Compared with original and
found correct,

THOMAS TAYLOR.

I hereby certify that the within writing is a true copy of the original indenture between the parties mentioned therein in reference to the construction and contract of Section 19, Intercolonial Railway, which said original is on file in the Department 20 of Railways and Canals, being one of the Departments of the Government of Canada.

Dated at the city of Ottawa, this 3rd day of March, 1880.

T. TRUDEAU,
Deputy Minister of Railways and Canals.

EXHIBIT "L L"—J. W. J.

KNOW ALL MEN BY THESE PRESENTS, That we, Thomas Boggs and John R. Murray, both of the City of Halifax, in the Province of Nova Scotia, in the Dominion of Canada, carrying on the business of ironmongers as co-partners, the Contractors for the completion of "Section No. 19" of the Intercolonial Railway, and Charles Graham and Charles Sutherland, both of the said City of Halifax, carrying on the 30 business of grocers as co-partners, and Nathaniel Russell and William Thomas Murray, both of the Township of Dartmouth, in the County of Halifax, in the Province aforesaid, carrying on the business of stovedealers as co-partners, the sureties for the said contractors for the completion of the said Section No. 19 of the said Railway, are held and firmly bound to Her Majesty Queen Victoria, her heirs and successors, in the sum of six hundred and eighty-nine thousand four hundred and sixty-six (\$689,466) dollars of lawful money of Canada, to be paid to Her Majesty, her heirs and successors, or her or their assigns, for which payment to be well and truly made, we bind ourselves, and each of us binds himself, for the whole and every part thereof, our and each and every of our heirs, executors and administrators, jointly and severally, 40 firmly by these presents, sealed with our seals and dated the second day of August, in the year of our Lord one thousand eight hundred and seventy-one.

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Whereas, The contractors above named have in and by a certain contract in writing, bearing even date herewith, and executed between them and Her Majesty, covenanted and agreed for the consideration therein mentioned, to make, build and construct and complete all that part now unfinished of that portion of the Intercolonial Railway known as section No. 19 as more fully described in the said contract, and all the bridges, culverts and other works appertaining thereto, the whole set forth in the said contract and according to the plans and specifications thereof therein referred to at and for the price or sum of three hundred and forty-four thousand seven hundred and thirty-three (\$344,733) of lawful money as aforesaid.

Now the condition of the above obligation is such that if the contractors or any 10 or either of them, their or any or either of their heirs, executors and administrators do and shall well and truly observe, perform, fulfil and keep all and every the covenants, clauses, articles and agreements specified and contained in the said contract, and in the said specification thereunto annexed, which on the part and behalf of the contractors their and each and every of their heirs, executors and administrators, is, are, and ought to be observed, performed, fulfilled and kept according to the true intent and meaning of the same, then the above written obligation shall be void and of no effect, or otherwise the same to remain in full force and virtue.

	(Sg'd.)	THOS. BOGGS,	
Signed, sealed and delivered in	"	JOHN R. MURRAY,	20
presence of	"	CHARLES GRAHAM,	
(Sg'd.)	"	CHAS. SUTHERLAND,	
GEO. A. ALLISON.	"	N. RUSSELL,	
	"	WILLIAM T. MURRAY.	

I hereby certify that the foregoing is a true copy of the original Bond made by Thos. Boggs and others to the Queen for the due fulfillment of a contract made by Thomas Boggs and others for the construction of Contract No. 19, Intercolonial Railway, dated August 2nd, 1871, which said original is filed in the Department of Railways and Canals, one of the Departments of the Government of Canada.

Dated at the city of Ottawa, this twenty-sixth day of February, A. D., 1880.

T. TRUDEAU,
Deputy Minister of Railways and Canals.

EXHIBIT "M M"—J. W. J.
INTERCOLONIAL RAILWAY.

GENERAL SPECIFICATIONS FOR THE CONSTRUCTION OF THE WORK.

1. This specification refers to all works of construction and materials required in making and building the railway up to the formation level and preparing it for the permanent way. It comprises clearing, close-cutting, grubbing, fencing excavation,

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drawing, ditching, foundation works, bridge and culvert masonry, the superstructure of the bridges, together with all other works connected with the construction and completion of the line of railway, the intention being that the contractor shall complete the road-bed of the railway and provide all materials of every kind, except the tiers or sleepers, iron rails and their fastenings, the ballasting and the laying of the track.

CLEARING, ETC.

2. Where the railway passes through wooded sections, the land must be cleared to the width of fifty feet on each side of the centre line, of such greater or lesser width as the Engineer may direct.

Clearing—

3. The clearing is to be done so that all brush, logs and other loose material within its limits will be burned. A sufficient quantity of fencing stuff only may be reserved, cut into equal lengths and piled. In no case shall any of the brush or logs be cast back upon the adjacent timber lands—they must be made into piles near the centre of the space to be cleared and there entirely consumed. All brush or trees, accidentally, or otherwise thrown into the adjacent woods must be dragged out and burned. The land when cleared must be left in a clean condition.

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Close-cutting—

4. Where embankments are to be formed less than four feet and more than two feet in height, all standing timber and stumps must be chopped close to the ground within the limits of the embankment and burned.

Grubbing—

5. Where excavations will not exceed three feet in depth or embankments two feet in height, all stumps must be grubbed out and, if possible, burnt. Those that will not burn must be carried beyond the limits of the cuttings and embankments where directed and there piled. Directions will be given at the proper time as to the extent of ground required to be cleared, close cut and grubbed.

FENCING.

6. The fencing through cleared and settled sections of the country will be straight panelled fence. Each panel will be ten feet long and four feet six inches high. It will be formed by placing posts in pairs and kept about four inches apart by the insertion of a horizontal rail at top. The top rail will lap between the posts not less than fourteen inches and will be secured in its position by a half-inch screw-bolt passing through both posts. The top rail may either be a spruce board 2x6 or a cedar pole of corresponding strength and reduced at the ends to two inches, so as to form a proper lap between the posts. The posts will be sunk in the ground half their length; they will be of cedar nine feet long and not less than five inches diameter at the smallest end; they will be flattened at the top to allow the proper lapping of the top rail and the insertion of the iron bolts to secure the whole finally; the bolt will be eleven inches long, half inch diameter, with suitable head, screw, nut and washer. At the option of the contractor the posts may be made from a single cedar stick not less than six inches diameter at the small end, sawn through the middle with the sawn faces placed on the lap of the top rail.

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7. Each panel will be filled in from the ground to the under side of the top rail with good strong common split fence rails or fence poles of the most suitable description of timber found in or near the locality. Each rail will rest on the top of its fellow in each alternate panel. All holes or depressions under the lower rail that would admit small animals must be stopped up with earth, stones, or blocks of wood.

Gates—

8. The farm gates will be light and strong, of an approved design, similar to those on the Grand Trunk Railway, east of Quebec, on the Nova Scotia Railway, east of Truro; they will be furnished complete with proper fastenings, they will receive two coats of white paint or one coat of tar.

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9. The fencing to be thoroughly complete through all the cleared lands, and wherever else it may be required by the engineer.

GRADING.

Time of commencement—

10. In woodland the grading will not be commenced until the clearing, close cutting and grubbing required to completion to the satisfaction of the engineer be done, and the contractor will be held responsible for all damage to crops.

Width and Slopes—

11. The width of embankments to sub-grade or formation level is intended to be eight or ten feet. The width of through cuttings will as a general thing be twenty- 20 two feet, and of side cuttings, twenty feet, but they may vary according to the section of the country and other circumstances as the engineer may direct. The slopes of earthworks will be made one and a half horizontal to one perpendicular. The rock cutting slopes will be as a rule one horizontal to four perpendicular. In cuttings partly earth and partly rock a berm of six feet shall be left on the surface of the rock. The widths, slopes, and other dimensions above defined may be varied by the engineer at any time to suit circumstances.

Materials in Embankments—

12. The materials to be placed in the embankments must be approved by the engineer, and in places where the natural surface of the ground upon which the em- 30 bankment is to rest is covered with vegetable matter which cannot be burned off in clearing, and which would in the opinion of the engineer impair the work, the same must be removed to his entire satisfaction. *Sloping Ground*—All sloping ground covered with pasture shall be deeply ploughed over the base of the embankments before the latter are commenced.

Underdrains—

13. All sidehill ground to be covered by embankments shall first be thoroughly underdrained, as the engineer may see expedient; and all cuttings after being formed and all slopes likely to be affected by wet must be similarly underdrained, longitudinally or transversely or both as circumstances may seem to him to require. These 40 drains will be constructed in a similar way to that in which ordinary land drains are sometimes made. A trench will first be dug to a depth of four feet on an average, and barely wide enough for a man to stand. In the bottom of this trench, three or

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four cedar or spruce poles, from two to three inches diameter, will first be laid by hand, breaking joint. Over the poles will then be placed two feet of coarse gravel or broken stone not longer than ordinary road metal, over which will be placed a coating of brush, and then the trench will be filled up to the surface of the ground with such material convenient to the place as the engineer may approve of. The contractor must find all the material required in these drains, do all the work described, and remove the surplus earth. These drains must always be made with a sufficient longitudinal fall for the easy flow of the water, and therefore they may in level-cuttings be deeper at one end than at the other, but the average depth will in all cases be considered four feet.

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Ditches—

14. On the completion of the cuttings and the underdrains provided for in the last clause, ditches for the removal of surface water shall be formed along each side at the bottom of the slopes according to directions to be given. Catchwater ditches shall also be formed some distance back from the top of slopes to exclude from the excavation any water flowing from the adjoining lands. The contractors shall also construct all other drains and ditches which the engineer may deem necessary for the perfect drainage of the railway and works.

Cuttings, Ditches, Roads, &c—

15. All open ditches in cuttings and elsewhere, and all excavations required for 20 turning, making or changing water courses other than the under-drains above mentioned, the formation of public roads, grading depot grounds, branches or turn-outs, and foundation pits for masonry, and the material deposited as the engineer may direct, must be executed as may from time to time be directed.

Embankments and Cuttings—

16. The embankments must be made in such sufficient height and width as will allow for the subsidence of the same, and both cuttings and embankments shall be left at the completion of the contract at such heights, levels, widths and forms as directed by the engineer.

Rounding of Roadway. Borrowing—

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17. The whole of the grading shall be carefully formed to the levels given, and the roadway in cuttings shall invariably be rounded and left from six to eight inches lower at the sides than in the centre line. In rock cuttings it will be sufficient to form a water channel about two feet wide and eight inches deep along each side. All materials found in excavations, whether in road-bed cutting, ditches, water channels, road crossing, borrowing pits, or elsewhere, must be deposited in such places as the engineer may direct. In cases where the road-bed excavations are insufficient to form the embankments, the deficiency shall be supplied by widening the cuttings or from the sides of the road or from borrowing pits, but no material shall be so supplied without his concurrence and not until the cuttings are completed without his 40 express directions. All borrowing pits shall if required by the engineer be dressed to a good shape and properly drained. Where material to make up embankments is taken from the side a berm of at least ten feet from bottom of slope of embankment shall remain untouched.

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Washing, Wasting—

18. Where the excavation in a cutting exceeds what may be required to make the embankments of the specified width, the engineer may direct that the embankments be increased in width with the surplus material, and when this is done to his satisfaction the remainder (if any) may be wasted; but in every case whether either borrowing or wasting is resorted to the materials, must be taken and deposited as he may regulate and direct.

Building Materials in Excavations—

19. In cases where pitching or rip-raping will be required for the protection of embankments contiguous to streams, all stone suitable for this work found in excavations 10 may be removed and deposited in some convenient place until required, and all good building stone which may be found in rock excavations may, with the approval of the engineer, be preserved and used in masonry.

Rip-Rap—

20. Rip-rap work, whenever required and ordered for the protection of slopes of embankments, must be well and carefully performed, in such manner and in such thickness as may be directed.

Service Roads, Land—

21. Roads constructed to and from any point on the line of Railway for the convenience of the contractor for the conveyance of material or otherwise, must be at his 20 own risk cost and charges; but the contractor will not be required to purchase land for the Railway track, for branches, or for borrowing pits.

Road Crossings—

22. Wherever the line is intersected by public or private roads, the contractor must keep open at his own cost convenient passing-places, and he shall be held responsible for keeping all crossings during the progress of the works in such condition as will enable the public to use them with perfect safety, and such as will give rise to no just ground of complaint. Contractors will be held liable for any damage resulting from negligence on their part or that of their men. At all public roads crossed on the level, the contractor will be required to put in two good substantial cattle-guards of wood, of such 30 dimensions as may be directed by the engineer, and also provide the notice-boards required by law.

Ballast—

23. Whenever any material is not within the excavations which the engineer shall consider suitable and required for ballast, the same shall, at his direction, be reserved for that purpose.

Slips—

24. When slips occur in cuttings, after they are properly formed, the material must be immediately removed by the contractor, the slopes reformed, and such precautions adopted as the engineer may deem necessary—the whole being done at the expense 40 of the contractor.



Loose Stone packing to wall. Filling against Wall—

25. In forming embankments, great care must be taken to place against the backs of all walls exposed to the action of frosts, three feet in thickness, or any greater thickness that the engineer may direct of rip-rap backing, consisting of small stones blinded with spalls or coarse gravel, to prevent the retention of moisture and the action of frost thereon; and in forming embankments between wing walls against abutments of bridges, viaducts or culverts and over arches, the earth filling must be carefully packed and prumed in thin layers, and a proper quantity of material must be carefully placed equally against each side of and over all bridges, culverts or other work before the embankment approaches it, and in forming embankments the greatest care must be observed 10 and every precaution must be taken to load the masonry and structures evenly.

Working in Winter—

26. In the event of earth excavation being proceeded with in winter, no snow or ice must be placed in embankments or allowed to be covered up in them, and all frozen earth must be excluded from the heart of the embankments

Contractor to finish up Cuttings, Embankments, &c—

27. The contractor shall, at his own cost, before the work is finally accepted, finish up cuttings and embankments, dress and drain borrowing pits when required, dress slopes to the required angles, repair all damages by frost or other causes, complete everything connected with the grading of the road-bed, bridges, &c., in a creditable and 20 workman-like manner, in accordance with the directions and to the satisfaction of the engineer.

FOUNDATIONS.

Depth of Pits—

28. Foundation-pits must be sunk to such depth as the engineer may deem proper for safety and permanency of the structure to be erected. They will in all cases be sunk to such depths as will prevent the masonry being acted on by the frost. The material excavated therefrom will be deposited in embankments, unless the engineer direct otherwise. Whenever timber or other artificial foundations may be found expedient, the pits will be made of sufficient dimensions to admit them without difficulty. 30

Inspecting and Pumping—

29. No masonry shall be commenced in any foundation pits before they have been inspected and approved by the Engineer, and they must be kept free from water during the progress of the work until the masonry is brought above the level of the surface.

Foundation Timber—

30. Foundation timbers, when required, will be of such dimensions and of such kinds as the Engineer may direct. The timber employed will be tamarac, hachmatac, hemlock, black spruce or pine, in planks from three to six inches thick. The faces of the flatted timber will, at least, measure as much as its thickness, and the bark will be 40 removed from the sides not flatted.

Iron and Spikes—

31. All spikes, bolts, straps or other iron-work found necessary to be used in timber foundations must be of the best quality of iron usually employed for similar purposes.

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Piling—

32. Whenever the Engineer may direct piling to be done, the timber shall be in every respect sound, and of such description as he may approve. Where he may think it necessary trial piles may first be driven.

33. The piles shall be carefully and truly pointed, hooped and shod with iron as may be directed. They shall be driven to any depth the engineer may deem expedient, and the weight of ram, as well as the fall, shall be such as he may consider necessary. The greatest care must be taken to drive the piles plumb or battered in such positions and distances apart as he may direct. Any pile that may be damaged or too short, or out of proper line when driven, shall be taken up and be replaced by another. The 10 heads of piles must not be injured in driving

Concrete—

34. Wherever concrete is employed (it will be employed) it must be composed of hydraulic lime, clean sharp sand and good gravel of approved quality and proportions. The proportion of sand and lime will be about the same as in mortar, and in making this concrete a sufficient quantity will be used with the gravel to fill up every interspace and render the mass when set perfectly solid and compact.

MASONRY.

General Character—

35. All the masonry must be of a substantial and permanent character, made of 20 durable and suitable materials and in every respect equal to the best description of masonry in railway works

When to be Commenced—

36. The masonry shall not be started at any point before the foundation has been properly prepared, or until it has been examined and approved by the engineer, nor until the contractor has provided a sufficient quantity of proper materials and plant to enable the work to be proceeded with regularly and systematically.

Cement—

37. Hydraulic lime mortar will be used, unless otherwise directed, in building all masonry from the foundation up to a line two feet above the ordinary level of the 30 stream. It will be used also in turning arches, in laying girder-beds, crossing, covering of walls generally, in lipping and in pointing. The hydraulic lime or cement must be fresh ground, of the best brand, and it must be delivered on the ground and kept till used in good order. Before being used satisfactory proof must be afforded the engineer of its hydraulic properties as no inferior cement will be allowed.

Common Lime—

38. Lime mortar must be made of the best common lime, and will be employed in all masonry (except dry) where cement is not directed to be used.

Mortar, how made—

39. Both cement and lime must be thoroughly incorporated with approved proportions of clean, large grained, sharp sand. The general proportions may be one part of lime to two parts of sand, but this may be varied according to the quality of the

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lime or cement. Mortar will only be made as required, and it must be prepared and used under the immediate direction and to the satisfaction of an inspector by the contractors' men, failing which the inspector may employ other men to prepare the mortar, and any expense incurred thereby shall be borne by the contractor. Grout shall be formed by adding a sufficient quantity of water to well-tempered and well-proportioned mortar.

Stone—

40. The stone used in all masonry on the line of railway, must be of a durable character, large, well proportioned, and well adapted for the construction of substantial and permanent structures. Parties tendering must satisfy themselves as to where fitting material for the masonry can be most conveniently procured. 10

Classification—

41. The masonry will be classified as follows:

First-class masonry in cement.		
"	"	in common lime.
Second-class	"	in cement.
"	"	in common lime.
"	"	dry.

First-class courses—

42. First-class masonry shall be in regular courses of large and well shaped stone laid in mortar, on their natural beds. The beds and vertical joints will be 20 hammer dressed, so as to form quarter inch joints. The vertical joints will be dressed back, square, nine inches; the beds will be dressed perfectly parallel throughout. The work will be left with the "quarry face," except the outside arrises, strings and copings, which will be chisel dressed.

Courses—

43. The courses of first-class masonry will not be less than twelve inches, and they will be arranged in preparing the plans to suit the nature of the quarry—courses may range up to 24 inches, and the thinnest courses invariably to be placed towards the top of the work.

First-class Headers and Stretchers—

44. Headers will be built in every course, not further apart than six feet; they will have a length in line of not less than twenty-four inches, and they must run back at least two and a half times their height, unless when the wall will not allow this proportion, in which case they will pass through from front to back. Stretchers will have a minimum length in line of wall of thirty inches, and their breadth of bed will at least be one and a half times their length. The vertical joints in each course must be arranged so as to overlap those in the course below, ten inches at least. 30

Quoins—

45. The quoins of abutments, piers, &c., shall be of the best and largest stones, and have chisel drafts, properly tooled on the upright arris, from 2 to 6 inches wide, 40 according to the size and character of the structure.

Coping, &c.—

46. Coping stones, string courses and cut-waters, shall be neatly dressed, in accordance with plans and directions to be furnished during the progress of the work.

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Bed stones for girders—

47. The bed-stones, for girders, shall be the best description of sound stone, free from dregs or flaws of any kind. They must be not less than 12 inches in depth for the smaller bridges, and 8 feet superficial area on the bed. The larger bridges will require bed stones of proportionately greater weight. These stones shall be solidly and carefully placed in position, so that the bridges will sit fair on the middle of the stone.

First-class backing and bond—

48. The backing will consist of flat bedded stone, well shaped, having an area of bed equal to four superficial feet or more. Except in high pieces or abutments, two thicknesses of backing stone must be allowed, but not more, in each course; and their 10 joints must not exceed that of the face work. In special cases where deemed necessary by the engineer to insure stability, the backing shall be in the one thickness. The beds must, if necessary, be scabbled off so as to give a solid bearing. No pinning will be admitted. Between the backing and face stones, there must be a good square joint, not exceeding one inch width, and the face stones must be scabbled off to allow this. In walls over three feet in thickness, headers will be built in front and back, alternately, and great care must be taken in the arrangement of the joints, so as to give perfect bond.

Grouting—

49. Every stone must be set in a full bed of mortar and beaten solid. The vertical joints must be flushed up solid, and every course must be perfectly level and 20 thoroughly grouted.

Second-class Masonry. General Description—

50. Second-class masonry shall be built of good, sound, large flat-headed stones laid in horizontal beds. It may be known as random work, or broken coursed rubble. The stones employed in this class of masonry will be generally not less in area of bed than three superficial feet, nor less in thickness than eight inches; and they must be thinner dressed, so as to give good bed with half-inch joints. In smaller structures, and in cases where stones of good sizes cannot be had, they may, if in other respects suitable, be admitted as thin as five inches. All stones must be laid on their natural beds.

2nd-class Headers and Stretchers—

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51. Headers will be built in the wall, from front to back alternately, at least one every five feet in line of wall and frequently in rise of wall. In the smallest structures headers shall not be less than 24 inches in length, and the minimum bed allowed for stretchers shall be twelve inches. In the larger structures all stones must be heavier in proper proportions. Every attention must be paid to produce a perfect bond, and to give the whole a strong, neat, workmanlike finish.

2nd-class Copings and Coverings—

52. Wing-walls will generally be finished with steps formed of sound, durable stone, and not less than from ten to twelve inches thick and six feet superficial area. Other walls will be covered with coping of a similar thickness, and of seven feet or 40 upwards superficial area. These coverings will be neatly dressed when required and as may be directed. The walls of the box culverts will be finished with stones the full thickness of the wall, and the covers will be from ten to fifteen inches thick, according to span. They must have a bearing of at least twelve inches on each wall,

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and they must be fitted sufficiently close together to prevent the earth from falling through.

Grouting—

53. In second-class masonry, each stone, except when dry work is intended, will be laid in full mortar, all joints flushed solid, and each course regularly and thoroughly grouted.

Lipping—

54. In all walls built in common lime, the exposed faces will have a four-inch lipping of cement.

ARCHES.

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Distinction between 10 feet and 8 feet Arches—

55. A distinction will be made between arches of ten feet span and upwards and those of eight feet span and under. The former will be of first-class masonry, although they may be constructed on walls of second-class work. Arches of eight feet span and under will be second-class masonry. Arches of each class will be semi-circular.

1st-class Arches—

56. First-class arches will be constructed of stones, cut, so as when laid their beds will radiate truly from the centre of the circle. The depth of stones will, of course, vary with the span, but will never exceed thirty inches; they may not be less in length than twenty-seven inches, and they must break joint ten inches; their thickness on the soffit must be at least nine inches, and it will be dressed to the circle. All the stones must be dressed to the full depth of bed, so as to give truly radiated joints from 3-16 to $\frac{1}{4}$ inch; they must be set without pinning of any kind, and the joints at the end must be properly squared. Each stone to be fully bedded in cement, and each course afterwards thoroughly grouted. The outer ring stones to be neatly worked with a chisel-draft around their edges.

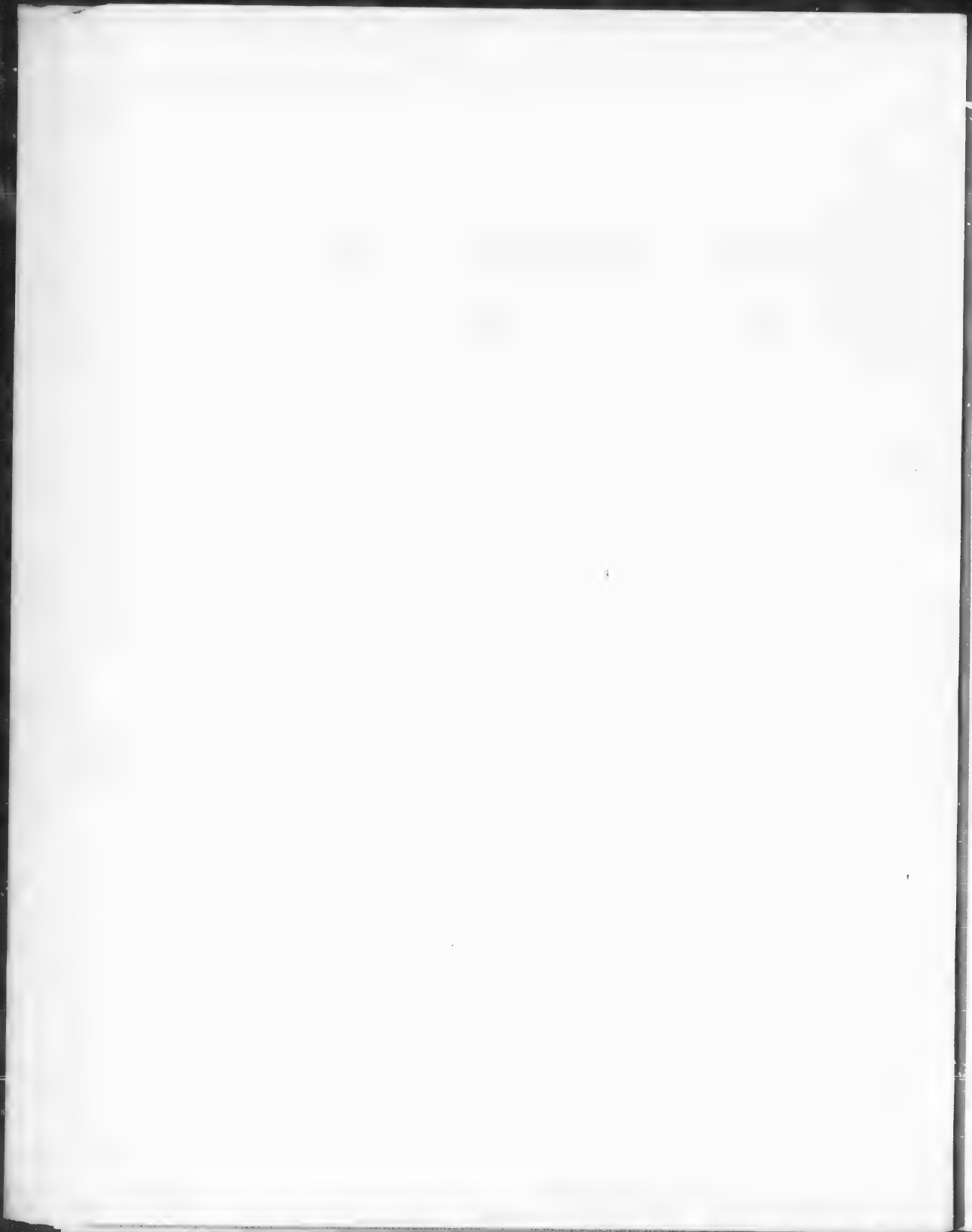
2nd-class Arches—

57. Second-class arches shall be constructed of suitable flat bedded stones, ranging according to the span from sixteen to twenty-four inches deep and with a minimum length of from sixteen to twenty-four inches, and five to six inches in thickness on the soffit. They must invariably extend through the entire thickness of the arch. Each stone to be well and closely fitted so as to give half-inch joints and to break joint with its fellow seven to nine inches. The whole must be laid in thin mortar and each course must be well grouted immediately after being laid. The outer arch stones to be as nearly uniform in thickness as possible, of large size and neatly incorporated with the perpendicular face of the masonry. The key-stones to be ten or twelve inches on the soffit, to have a chisel draft around their edges, and to project beyond the face of the wall two or three inches.

Cement to be used—

58. Arches of each class shall be built in cement, and before being covered with earth or the centring removed they must be thoroughly flushed on the back, levelled up and rounded to a moderately even and smooth surface with the same material.

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Centring—

59. Centres of arches must in all cases be well formed, of ample strength, securely placed in position, and in every respect to the satisfaction of the engineer.

The ribs must not be placed further apart than three feet in any case. The lagings shall be cut to a scantling of three inches square. The supports of centres shall be substantial and well constructed and they must be provided with proper wedges for easing centres when required.

60. Structures having more than one arch shall be provided with as many centres as the engineer may deem proper, and in no case shall the centres be struck without his sanction.

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Centring and Scaffolding—

61. Centring and scaffolding of all kinds shall be provided by the contractor.

Pointing and Protection in Winter—

62. All masonry must be neatly and skillfully pointed; but if done out of season, or, if from any other cause, it may require re-pointing before the expiration of the contract, the contractor must make good and complete the same at his own cost. Work left unfinished in the autumn must be properly protected during the winter by the contractor at his risk and cost.

MISCELLANEOUS WORKS.

Punning and Filling—

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63. After the masonry of a structure has been completed for a period of four or five weeks, the formation of the embankment around it may be proceeded with. The earth must be carefully punned in thin layers around the walls, and in this manner the filling must be carried up simultaneously on both sides. The contractor must be extremely careful in forming the embankments around culverts and bridges, as he will be held liable for any damages to the structures that may arise. The punning must be carefully attended to and the whole filling must invariably be done in uniform courses from the bottom to the top of the embankment, without loading one side of the masonry more than another.

Paving—

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64. The bottoms of culverts will be paved with stones set on edge to a moderately even face packed solid, and the interstices filled with grout formed of hydraulic cement. The paving will be from 12 to 16 inches deep.

65. All the works shall be executed in a thoroughly good, substantial, workman-like manner to the satisfaction of the engineer, and upon their completion the contractor shall clear away all rubbish and unnecessary material.

BRIDGES.

66. To be of the most approved Howe-Truss pattern, built of pine, with white oak keys, cast iron prisms and wrought iron rods, the whole to be of first-class material and workmanship, painted three coats. Detailed drawings and specifications will 40

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be prepared during the progress of the works by the Engineer to suit each span or bridge, and to which the contractor must work.

(Sgd.) A. WALSH,
 " ED. B. CHANDLER,
 " C. J. BRYDGES,
 " A. W. McLELAN,
 " W. F. COFFIN,
Commissioners.

(Sgd.) SANFORD FLEMMING,
Chief Engineer. 10

Compared with original and found correct,

T. TAYLOR.

INTERCOLONIAL RAILWAY OFFICE,
 OTTAWA, 11th Feb'y., 1869.

A true copy of the original as filed in the Department of Railways and Canals,
 Ottawa, 3rd March, 1880.

T. TRUDEAU.
Deputy Minister of Railways and Canals.

(A 1.)

INTERCOLONIAL RAILWAY.

CONDITIONS OF CONTRACT FOR SECTIONS Nos. 17, 18, 19 AND 20. 20

The Commissioners appointed to construct the Intercolonial Railway give public notice that they are now prepared to receive tenders for four further sections of the line.

Section No. 17 will be in the Province of Quebec, and will extend from the easterly end of section No. 14 down the Metapedia valley to station No. 685, about one mile above the boundary line, between the Counties of Rimouski and Bonaventure, a distance of about 20 miles.

Section No. 18 will be in the Province of Quebec, and will extend from the easterly end of section No. 17 down the Metapedia valley to station No. 380, near Clarke's Brook, a distance of about twenty miles.

Section No. 19 will extend from the easterly end of section No. 18 in the Province 30 of Quebec, down the Metapedia Valley to its mouth, and thence across the River Restigouche to station No. 370 at the westerly end of station No. 3, in the Province of New Brunswick, a distance of about nine and one-third miles, including the bridge over the River Restigouche.

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Section No. 20 will be in the Province of New Brunswick, and will extend from the easterly end of section No. 10 in the Town of Newcastle, on the Chaplin Island, and thence crossing the north-west and south-west branches of the River Miramichi and terminating at station No. 320, about one mile and three-quarters south of the south-west branch, a distance of about six miles, including the bridges over the branches of the River Miramichi.

The contract for section No. 17, 18, 19 and 20 to be completely finished and ready for laying the track by the first day of July, 1872.

No tender will be received except upon the printed form issued with this document, and it must specify the number of the section tendered for. 10

The Commissioners will provide all the land required.

Plans and profiles will be exhibited to intending contractors, and they will be supplied with all the information in the possession of the Commissioners as to quantities, character of work, description of soil, etc., but contractors must satisfy themselves as to all the points connected with the work as the Commissioners will no way be bound by any information so afforded.

The tender must specify the lump sum for which the work will be constructed and the rate per mile.

The contractor will be required, also, to fill in the schedule of quantities and prices attached to his tender, to enable the Commissioners to judge as to the tender; but such schedule is in no way whatever to vary the condition of the contract, which is the payment of a lump sum for the entire completion of the whole section contracted for.

The general specification attached must be taken to include everything necessary for the entire completion of the section up to formation level, leaving nothing to complete it as a railway fit for carrying traffic, but the ties or sleepers, the iron rails, track laying and ballasting.

The contract provides that no extras of any kind whatever will be allowed. The work must be completed to the full satisfaction of the Commissioners, and no greater sum will be paid than the amount of the accepted tender.

The contractor will be alone responsible for the quantities of the different kinds of 30 work of every description.

The form of contract to be executed is printed at the end of the specifications.

(Sg'd)	A. WALSH,
"	ED. B. CHANDLER.
"	C. J. BRIDGES,
"	A. W. McLELAN,
	<i>Commissioners.</i>

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INTERCOLONIAL RAILWAY OFFICE,
OTTAWA, 24th March, 1870.

A true copy of the original, as filed in the Department of Railways and Canals here.

T. TRUDEAU,
Deputy Minister of Railways and Canals.

Compared with the original and found correct.

THOMAS TAYLOR.

EXHIBIT "N. N."—J. W. J.

INTERCOLONIAL RAILWAY.

(DIVISION OF THE LINE.) I.

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BILL OF WORKS AND SERVICES.

CONTRACT No. 19, extending from the easterly end of Contract No. 18, (station 380, near Clarke's Brook) down the Metapedia Valley, to its mouth; and thence across the River Restigouche to station 370 at the westerly end of Contract No. 3, a distance of about $9\frac{1}{4}$ miles, including the Bridge (except iron superstructure) over the River Restigouche.

This Bill is an abstract of all the information in the possession of the Commissioners and the undersigned with regard to the quantities of work to be executed.

The quantities herein given are ascertained from the best data obtained; they are as far as known (approximately) accurate; but at the same time they are not warranted as accurate and no claim of any kind will be allowed though they may prove to be inaccurate.

The quantities of excavation are for the most part ascertained from cross sections; the proportion of rock excavation is estimated from information furnished by test pits dug at intervals along the line of railway, and the information thus ascertained, and the nature of the soil to be excavated will generally be found written on the profiles, but the accuracy of this information is not guaranteed. Contractors must satisfy themselves on this as well as on every point, as no addition or deduction will be made in the event of any excavation, turning out more than, or different from what may be represented or supposed.

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A schedule of cuttings and embankments is furnished, showing the approximate quantities in each, and giving an estimate of the probable proportions of earth and rock which will require to be executed on the contract. The excavations are calculated *net measurement* and the contractor will observe that a percentage allowance is added to embankments for waste subsidence, wash, beyond slope lines, &c. The contractor is required to make every allowance which he may deem necessary to cover the risk of any of the quantities of work being increased in execution.

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A schedule of structures proposed for the passage of streams and general surface drainage across the line of railway is also furnished. The structures proposed are, from all the information obtained, believed to be the most suitable, but should circumstances require any change in the number, position, water way or dimensions the contract will provide that all changes shall be made by the contractor without any extra charge. This schedule gives the probable quantities in the structures now proposed, and the data upon which these quantities are ascertained; much, however, depends upon additional information to be obtained with regard to the freshet, discharge of streams, as well as the nature of the foundations, and, with respect to the latter, accurate information can only be had during the progress of the work

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The prices put in the schedules to the tenders will be applied to this bill by the Commissioners to enable them to judge how the tenders are made up.

The Commissioners will consent to the substitution of iron cylinders for box culverts of masonry at certain points to be designated by the Engineer, such as those places where the inclination of the streams on hillside ground renders the plan of construction shown on sheet No. 17 necessary, wherever these cylinders are employed they must be three feet in diameter in the clear and weigh not less than 450 lbs. per lineal foot; they must be embedded throughout in concrete and furnished with substantial wings and parapets of masonry at the ends; they must be made and laid according to the plans and directions of the Engineer, and such precautions taken as he considers necessary to render the whole solid and permanent.

Where iron cylinders or other structures are allowed or directed to be used in the place of those mentioned in the schedule of structures, they will be paid for at the prices in the schedule to the tender, and a deduction will be made from the contract sum of the total saving effected thereby according to the reduction in total quantities calculated at the schedule prices.

This contract embraces the piers, abutments, approaches, protection works, and everything connected with the bridge across the River Restigouche, except the iron superstructure and the erection thereof. Both piers and abutments must be built in the most substantial manner of massive masonry, according to plans and directions to be given. The masonry must be founded on the rock which must be laid bare, and levelled to receive it. The stone employed must be according to sample (or equally good), a "diorite" found near the banks of the Restigouche, about two miles above the bridge site.

The bridge will be on a skew of about forty-five degrees. The contractor will be required to complete the masonry of each successive span, so that the erection of the iron girder work must be commenced and carried on regularly at as early a date as possible, and so that the whole bridge, including superstructure, may be complete by the time fixed for the completion of this contract.

ENGINEER'S OFFICE, OTTAWA,
10th May, 1870.

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Compared with original and found correct,

THOMAS TAYLOR.

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I certify that this paper is a true copy of the original as filed in the office of the Department of Railways and Canals here.

OTTAWA, 3rd March, 1880.

T. TRUDEAU,
Deputy Minister of Railways and Canals.

BILL I.

Approximate Quantities.	Description of Work or Service.	
22	acres clearing (generally 132 feet wide, or one rod beyond fencing).	
1	acre close-cutting.	
1½	acres grubbing.	
85,000	lineal feet fencing, as per specification.	10
57,500	cubic yards rock excavation.	
427,000	cubic yards earth excavation.	
2,000	lineal feet under drains.	
6,800	cubic yards rip-rap.	
1,400	cubic yards concrete.	
7,600	cubic yards first-class masonry, cut-waters and exposed faces of abutments, and piers to be secured by iron clamps and dowels as may be directed.	
3,200	cubic yards second-class masonry.	
500	cubic yards paving.	

In addition to the quantities herein given, the attention of contractors is drawn 20 to other services mentioned underneath, for which all allowances must be embraced in the tenders.

Foundations—

Embracing coffer dams for the bridge over the River Restigouche, and all other similar foundations at other points. Embracing also all excavation and concrete, &c., (see schedules) not already included in the above quantities; and all timber, plank, piles, draining, pumping, blasting, levelling and everything else that may be found necessary.

Bridge Superstructure—

Including Howe-Truss Timber Bridges, complete with three coats anti-corrosive 30 paint, and properly protected in all.

Two Spans of 40 feet each—

Including also superstructure for one beam bridge of 20 feet span.

Also the following beam culverts, viz:—One of 12 feet span; two of 10 feet span; three of 8 feet span; and four of 6 feet span; and all bolts, rods, spikes and plates required, and everything else necessary to complete this service.

(NOTE.—The superstructure of the Restigouche bridge will not be included in this contract.)

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Road Crossings and Diversions—

Including two public road crossings, with cattle guards, stringers and sign boards complete.

Also about ten single farm crossings with suitable gates, hinges and fastenings.

Also one road diversion (see special works below.)

Also all excavation in approaches, not already included in common excavations, and everything else required to complete all road crossings and road diversions.

Special Works—

1. Road diversion between stations 320 and 299, 2,100 feet in length, comprising about 900 cubic yards of rock excavation and 1,900 cubic yards of earth excavation; 3 10 culverts, 3 feet x 2 feet each, built of cedar logs; also, crib-wharfing of round cedar logs, averaging 4 feet high on the face, well secured with cross-ties, as per sketch, and filled in from the above rock and earth excavations. To be finished with guard-posts and railing complete and everything else required to complete the road diversion in a perfectly satisfactory manner.

Protection to slopes of embankment, crib-wharfing, of round cedar logs, filled with stone and coarse gravel, as per sketch (see general drawing, No. 26), will be constructed between the various points shown on the profile; aggregate length about 6060 feet, and comprising about 40,000 cubic yards of stone, gravel and timber combined. Rip-raps will be used between various other points (approximate quantity given in Bill) and such 20 other protection as may be deemed necessary to thoroughly secure the embankment from the wash of the river and other streams.

Omissions and Contingencies—

Allowances should also be made for the following, viz:—For any errors in measurements or calculations, or deficiencies in quantities. For all alterations considered necessary in structures that may be found inadequate in water way or strength. For removing all buildings and other obstructions on the line of Railway. For re-building fences destroyed by fire, and for repairing all injuries done before the completion of the contract. For making good all temporary damage to owners or occupants of lands, through loss of, or injury to, crops or cattle, through trespass of workmen, or through 30 any other cause. For making compensation for all damage done to property or persons through operations or accidents of any kind. For providing and maintaining proper tools, plant and materials for carrying on the works. For re-pointing or re-building any masonry injured through any cause or not according to specifications. For completing, upholding and maintaining the whole of the works until their final acceptance at the close of the contract, and for making good all damages which may result from floods, frost, fire or from any kind of accident. Generally, from all omissions and, to cover all, possible risks and contingencies.

(Sig'd.) SANDFORD FLEMING,

Chief Engineer. 40

Compared with the original and found correct.

THOS. TAYLOR.

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SCHEDULE.

(EXTRACT.)

(RESTIGOUCHE DISTRICT.)

(DIVISION OF THE LINE). "B."—J.W.J.

INTERCOLONIAL RAILWAY.

Contract No. 19, extending from easterly end of Contract No. 18 (station 380, near Clarke's Brook) down the Metapedia Valley to its mouth, thence across the River Restigouche to station 370 at the westerly end of Contract No. 3, a distance of about 9 1-3 miles.

Schedules of cuttings and embankments shewing the approximate quantities in each and giving an estimate of the probable proportions of earth and rock excavations which will require to be executed on the contract.

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	Rock	Earth.
For catch-water drains, stream diversions, entrance and outlets to culverts, say	1,200	17,000
Approaches to public and private road crossings.....		7,600
Excavations in foundations of bridges, culverts and cattle guards...	1,000	6,300

N. B.—Where embankments require more material than the line cuttings at ordinary width supply contractors will be required, under clause 17 of the specifications, to take the required material from the sides of cuttings by increasing their width until the haul exceeds an average of 800 feet, or a maximum of 1600 feet, after this material required must generally be taken from borrowing pits.

22,000 cubic yards of this to be carried across the River Restigouche to form the base of the embankment between stations 494 and 479 to an average of 2 feet above high water line. This may be done during the winter on the ice. The balance of the rock cutting will be deposited as may be directed for the protection of embankments east of the Restigouche Bridge.

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ABSTRACT.

Say total rock excavation.....	57,500 cubic yards.
" " earth "	427,000 "

I hereby certify that this paper is a true copy of the original, as filed in the Office of Department of Railways and Canals here.

OTTAWA, 3rd March, 1880.

T. TRUDEAU,

Deputy Minister of Railways and Canals. 30

I hereby certify that the foregoing is a true copy of the original specification for the construction of Contract No. 19 (Restigouche District) Intercolonial Railway, and also of the original schedules of works and quantities and other information respecting said section No. 19 of the Intercolonial Railway, including the bill of works and services, schedules of cuttings, embankments, excavations, &c., which said originals are filed in the Department of Railways and Canals, being one of the Departments of the Government of Canada.

Dated at the City of Ottawa, this third day of March, A.D., 1880.

(Sg'd) T. TRUDEAU,

Deputy Minister of Railways and Canals. 40

Sec

EXHIBIT "P P"—J. W. J.

Section 19, Intercolonial Railway.—Details of Work done by Alex. McDonald, as shewn by Cross-sections of Railway.

STATIONS.	Excavation—Cubic Yards		STATIONS	Embankment. Cub. Yds.
	Rock.	Earth.		
168x50 - 171x64	286	....	162 - 178x41	7967
176x74 - 179x84	97	....	185x40 - 206x65	18212
180 - 184x54	....	872	214x33 - 218	379
184x54 - 185x40	318	....	220 - 235x25	5556
206x65 - 216x75	1510	....	237x80 - 249	16939
217x81 - 221	496	....	249 - 260	14846
230 - 238	3192	16453	260 - 275x50	13587
254 - 257	....	8302	276x10 - 289	13237
275x50 - 277x50	....	3253	304x75 - 317x14	13030
288x32 - 305x60	4973	11386	329x60 - 334x90	3173
317 - 340x75	....	56996	339 - 341x30	33064
346x50 - 347x50	....	793	362x44 - 369	1160
359x70 - 363	129	32	372x70 - 375x30	2085
368 - 372x70	...	1843		
375x30 - 379	....	1082		
Totals.. ..	11001	101012		138,235
			Per cent added..	155,514

[illegible]

*Section 19, Intercolonial Railway.—Details of Miscellaneous Work done
by Alex. McDonald.*

STATIONS.	Description of Work.	Cubic Yards.		Cubic Yards.		Lin. feet under Drains.
		Rock.	Earth.	Crib- wharf'g	Rip-rap.	
162 - 169x50	Catch-water—Right	..	125			464
172 - 175	" Drain	..	50	....	....	
187 - 188	" "	..	5	....	....	
185 - 188x50	" "	..	58	....	....	
201 - 217	" Right	33	234	....	....	
219 - 228	Borrowing connecting catch-water ..	..	942	....	....	
220 - 230	Under Drains .....	..	..	....	....	
225	Inlet to Culvert	..	15	....	....	
225 - 226	Rip-rap at Culvert .....	..	..	....	125	
226	" .....	..	..	....	137	
226 - 234	Road Ditch	..	383	....	..	
231 - 234	Rip-rap .....	..	..	....	831	
240x50 - 247	Ditch to No Man's Gulch	..	158	....	..	
226 - 234	Borrow Ditch—Right	..	939	....	..	
242 - 247x90	Catch-water	..	33	....	..	
259x80	Rip-rap .....	..	..	....	2757	
259 - 269x30	Inlet to Culvert	..	214	....	..	
259x30 - 278	Crib-wharfing	..	..	8249	..	
269 - 278x50	Side Ditch	..	104	....	..	
269 - 275	"	..	158	....	..	
277 - 278x50	Widening Bank	..	1204	....	..	
278	"	..	1200	....	..	
281	Rip-rap .....	..	..	....	30	
281	Stream Diversion—Upper	..	588	....	..	
"	" Lower	..	518	....	..	
287	Rip-rap .....	..	..	....	753	
295	" .....	..	..	....	367	
307	Inlet to Culvert	47	..	....	..	
"	Side Ditch	..	84	....	..	
310	Inlet to Culvert	24	..	....	..	
305 - 317x90	Crib-wharfing	..	..	8655	..	
327x60	Outlet from Culvert	..	30	....	..	
"	Side Ditch—Right	..	1182	....	..	
329x50 - 334	Crib-wharfing	..	..	2115	..	
340	Side Ditches	..	157	....	..	
339x50 - 355x50	Crib-wharfing	..	..	9380	..	
361	Borrowing—Right	..	105	....	..	
361x50	" E. & W. of Culvert ..	..	129	....	..	
"	Inlet to Culvert	..	141	....	..	
"	Outlet from Culvert	..	59	....	..	
	Borrow Pit, River side	..	224	....	..	
	" Hill opp. stat'n 356 ..	..	1390	....	..	
367	Inlet to Culvert	..	16	....	..	
"	Outlet from Culvert	..	35	....	..	
371x50	Ditch—Right	..	128	....	..	
"	" Borrowing	..	1219		..	
375	Rip-rap, Clarke's Brook	..	..		369	
Totals		104	11777	28399	5369	464

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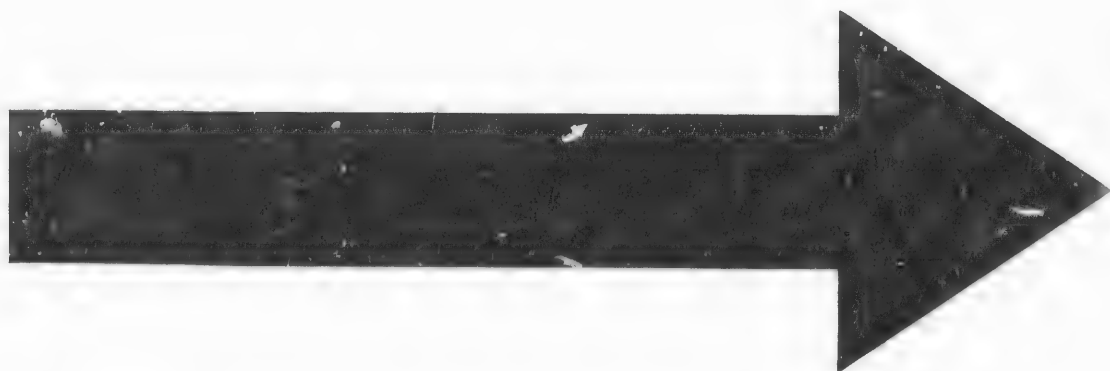
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EXHIBIT "Q Q"—J. W. J.

Section 19. Intercolonial Railway.—Abstract of Quantities, Stations 162 to 380.

	Excavation.		Embankment.	Crib-wharfing.	Rip-rap.	Under Drains.
	Rock.	Earth.	Cub. Yds.	Cub. Yds.	Cub. Yds.	Lineal ft.
Line cuttings and fillings.....	11001	101012	155514	.....	.....	
Borrow Pits measured.....		4948	.....	.....	.....	
Ditches, Inlets, Outlets, &c.	104	6829	.....	28209	.....	
Crib-wharf measured. ....	.....	.....	.....	.....	.....	
Do. Cross-sections do.....	.....	.....	.....	.....	5369	
Rip-rap do. ....	.....	.....	.....	.....	.....	464
Under-drains do .....	.....	.....	.....	.....	.....	
Totals.....	11105	112789	155514	28399	5369	464
Total line excavation of above }	.....	112013	.....	Line Excavation. C.Y. 112013	.....	
spoiled..... }	.....	22510	.....	.....	.....	
Balance available.....	.....	89508	.....	.....	.....	
Borrow pits measured.....	.....	4948	.....	.....	.....	
Balance of borrowing		61068		66011		
Total.....		155514		178024		



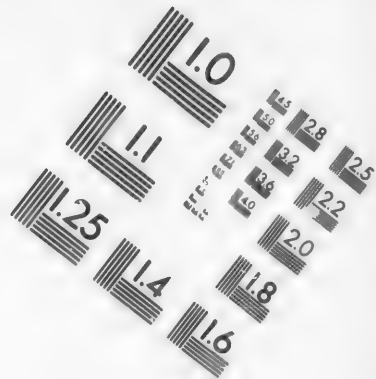
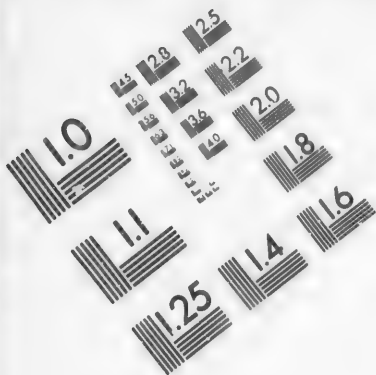
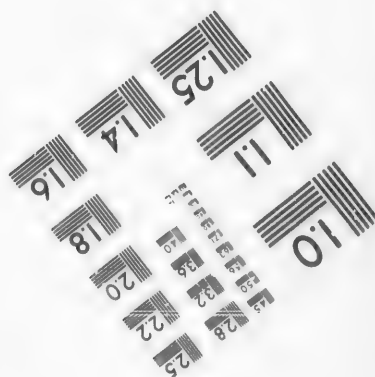
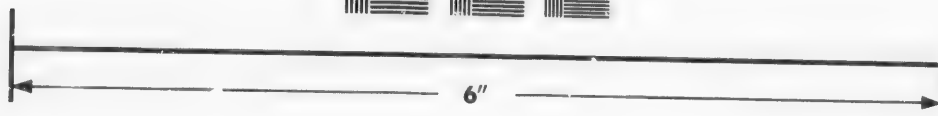
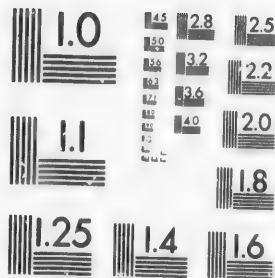


IMAGE EVALUATION TEST TARGET (MT-3)



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EXHIBIT "A 1"—J. W. J.

Section 19, Intercolonial Railway.—Memorandum of Quantities.

STATIONS.	LINE CUTTINGS.				INCREASE.		DIMINUTION.	
	Bill of Works.		Measurements.					
	Cub. Yds.		Cub. Yds.		Cub. Yds.		Cub. Yds.	
	Rock.	Earth.	Rock.	Earth.	Rock.	Earth.	Rock.	Earth.
371x50 - 376x40	.....	1510	.....	1440	.....	.....	.....	70
383x90 - 895	.....	910	.....	1036	.....	126	.....	
406 - 409x30	.....	1490	.....	1666	.....	176	.....	
415x15 - 416x50	.....	50	.....	88	.....	33	.....	
419x50 - 432x70	.....	17670	.....	16700	.....	.....	.....	970
441x40 - 445x60	.....	656	80	568	80	.....	.....	87
453x30 - 465x30	29140	14500	44570	4858	15430	.....	.....	9642
509x80 - 520x10	11440	18650	15272	12143	3832	.....	.....	6507
76 - 79x50	790	3780	1342	477	552	.....	.....	3808
83x80 - 88x15	1680	850	1646	68	.....	.....	84	782
91 - 103	300	2430	2403	886	2103	.....	.....	1544
106x50 - 108x75	450	830	880	870	.....	.....	70	40
112x88 - 121x50	150	1790	8937	186	3787	.....	.....	1594
122x25 - 124x50	580	.....	888	.....	.....	.....	147	.....
139x20 - 148x80	.....	26240	.....	20306	.....	.....	.....	5934
169x60 - 171	680	.....	236	.....	.....	.....	344	.....
176x80 - 186	.....	1450	415	872	415	.....	.....	578
206x80 - 215	1170	3870	1510	.....	840	.....	.....	3370
215 - 222	320	1660	496	.....	176	.....	.....	1660
228x50 - 238	4370	2340	3192	16453	.....	14113	1178	.....
254 - 277	.....	61810	.....	91147	.....	29837	.....	.....
288x20 - 305	4380	24250	4973	11386	643	.....	.....	12364
317 - 338x85	.....	35530	.....	56996	.....	21466	.....	.....
346x70 - 348x50	.....	3320	.....	793	.....	.....	.....	2527
356x50 - 373	.....	1900	129	1875	129	.....	.....	25
375x50 - 378x50		840		1082		242		
Totals.....	55800	227260	81014	241835	27437	65993	1773	51497

JS. O'DELL.

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PAPER MARKED "B 1."

Earth excavation 92710 is accounted for by the deduction of 87894, being the whole excavation between stations 249 and 258, whereas there should have been added the quantity shewn on original cross-sections (torn by Mitchell) viz: 8302
 Add 92710

101012 as shewn on paper P. P.

EMBANKMENT, PAPER "B 1" 128012

250-260 c. y.
 Embankment by original sections..... 14846
 Less do by measurement 249-260..... 4423

10223

10223

138235 as shown on paper P P

Paper "B" was prepared in 1876, (either Nov. or Dec.,) before the obtaining of original sections for which I wrote to Schreiber (at Mitchell's request) in Sept., 1876, but did not receive them. I first saw them in Engineer's office, Ottawa, in May, 1877, at which time I copied them.

EXHIBIT "B 1."—J. W. J.

	Rock.	Earth.
Excavation by cross sections.....	11000 c. y.	92710 c. y.
Do. miscellaneous work.....	91	6119
	11091	98829

	cu. yd.
Embankment.....	128012
Excavation by cross sections..	108712

Leaving 24300 c. y. to be provided by borrowing.

NOTE.—The cross sections between stations 249 and 258 are not the same as those furnished when the work was let.

MASONRY.

	Earth.	Rock.
Excavations of foundations..	1127	21
Masonry.....	691	c.y. dry do. outside 396 c. y.
Paving.....	101	"
Concrete.....	37	"
Clarke's brook bridge (no plan)	600	" taken from Bill of Works.
Crib-wharfing measured in Oct., 1875—	28399	cub. yds.
Rip-rap Clarke's brook bridge—	369	c. y.

NOTE.—In the above estimate no deduction has been made for work done by Archibald & Vosburg.

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EXHIBIT "E 1."—J. W. J.

*Section 19, Intercolonial Railway.—Details of Work done by Alex. McDonald,
as shown by cross-sections of Roadway.*

STATIONS.	EMBANKMENT. Cub. Yds.	STATIONS.	EXCAVATION (red ink). Cub. Yds.	
			Rock.	Earth.
162 - 178x41	7967	168x50 - 171x64	256	
185x40 - 206x65	13212	176x74 - 179x84	97	
214x38 - 218	379	180 - 184x54	....	872
220 - 285x25	5556	184x54 - 185x40	318	
237x80 - 249	16939	206x65 - 216x74	1510	
249 - 260	14846	217x31 - 221	496	
260 - 275x50	13587	280 - 288	3192	16453
276x13 - 289	13237	254 - 257	....	8302
304x75 - 317x14	13030	275x50 - 277x50	....	3253
329x60 - 334x90	3173	288x32 - 305x60	4973	11386
339 - 361x30	33064	317 - 340x75	....	56996
362x44 - 369	1160	346x50 - 347x50	....	793
372x70 - 375x80	2085	359x70 - 363	129	32
		368 - 372x70		1843
		375x80 - 379		1082
Totals.....	138235		11001	101012

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Section 19, Intercolonial Railway.—Details of Miscellaneous Work done by Alex. McDonald.

STATIONS.	Description of Work.	Cubic Yards.		Cubic Yards.		Lin. feet under Drains.
		Rock.	Earth.	Crib- wharf'g	Rip-rap.	
162 - 169x50	Catch-water—Right		125			
172 - 176	" Drain		50			
187 - 188	" "		5			
185 - 188x50	" "		58			
201 - 217	" Right	33	284			
219 - 228	Borrowing with catch-water		942			
	Ditch to No Man's Gulch		158			
220 - 230	Under Drains					464
225	Inlet to Culvert		15			
225 - 226	Rip-rap at Culvert.				125	
226	"				137	
226 - 234	Road Ditch		383			
228 - 254	Catch-water		33			
231 - 234	Rip-rap				831	
240x50 - 247	Borrow Ditch—Right		939			
242 - 247x50	Rip-rap				2757	
259x30	Inlet to Culvert		214			
259 - 269x30	Crib-wharfing			8249		
259x50 - 278	Side Ditch		104			
269 - 278x50	"		158			
269 - 275	Widening Bank		1204			
277 - 278x50	"		1200			
278	Rip-rap				30	
281	Stream Diversion—Upper		588			
"	" Lower		518			
287	Rip-rap				753	
295	"				367	
307	Inlet to Culvert	47				
"	Side Ditch		84			
310	Inlet to Culvert	24				
305 - 317x90	Crib-wharfing			8655		
327x60	Outlet from Culvert		30			
"	Side Ditch—Right		1182			
329x50 - 334	Crib-wharfing			2115		
340	Side Ditch		157			
339x50 - 355x50	Crib-wharfing			9380		
361	Borrowing—Right		105			
361x50	" E. & W. of Culvert		129			
"	Inlet to Culvert		141			
"	Outlet from Culvert		59			
	Borrow Pit, River side		224			
	" Hill opp. stat'n 356		1390			
367	Inlet to Culvert		16			
"	Outlet from Culvert		35			
371x50	Ditch—Right		128			
"	" Borrowing		1219			
375	Rip-rap, Clarke's Brook				369	
Totals		104	11777	28399	5369	464

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EXHIBIT "F 1."—J. W. J.

Section 19, Intercolonial Railway.—Details of Borrowing, between Stations 162 to 380.

STATIONS.	Embankment. Cub. Yds.	STATIONS.	Excavation. Cub. Yds.	Borrowed. Cub. Yds.
162 - 178	8963	168 - 179x34	383	8580
186x40 - 218	15291	180 - 221	3196	12995
220 - 249	25307	230 - 238	19845	5662
249 - 275x50	31987	254 - 257	8302	23685
276x10 - 279	8361	275x50 - 277x50	3253	108
279 - 289	11529	288x32 - 299x50	11180	349
351 - 369	17065	346x50 - 372x70	2797	14268
372x70 - 375x80	2846	575x30 - 379	1082	1264
Totals.....	115849		49888	66011
		Less Borrow Pits measured		4948
		Balance Borrowed.....		61063

EXAIBIT "G 1."—J. W. J.

Section 19, Intercolonial Railway.—Memo. of Materials spoiled between Stations 299 and 351.

STATION.		C.	C.Y.
299x50 - 305x60	Excavation, 5179	}	45 spoiled.
304x75 - 310	Embankment, 5184		
310 - 317x14	Embankment, 9524	}	1101 "
317 - 326	Excavation, 10625		
326 - 328	Excavation,	}	7600 "
328 - 329	Excavation, 3788		
329x60 - 334x90	Embankment, 8570	}	218 "
329 - 335	Excavation,		
335 - 340x75	Excavation, 23906	}	11077 "
339 - 351	Embankment, 21437		
	Total spoiled		22510 cub. yds.

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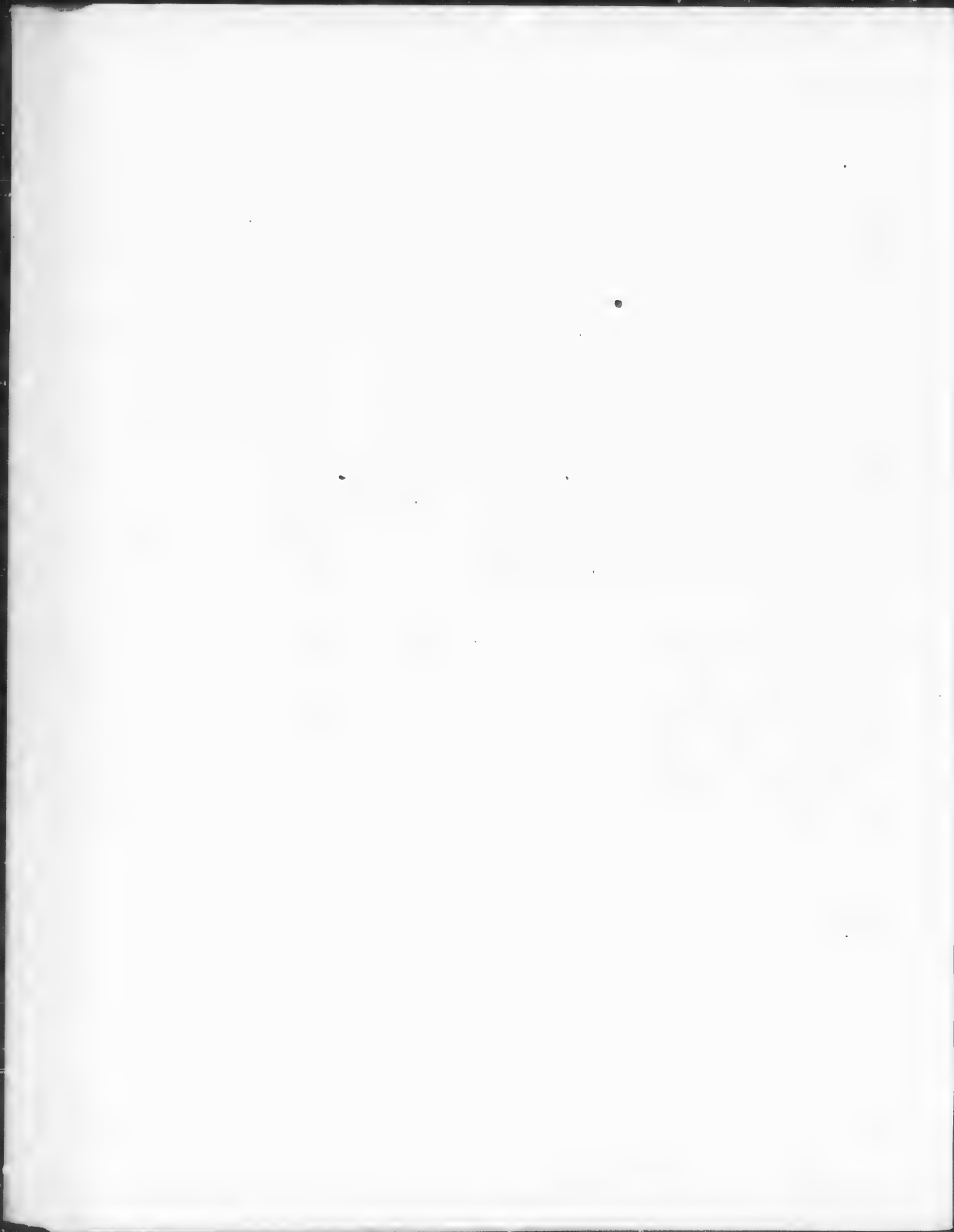
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EXHIBIT "H 1."

Section 19, Intercolonial Railway. — Abstract of Quantities of Embankment and Cuttings. Station 162 to 380.

STATION TO STATION.	Embankment. Cub. Yds.	STATION TO STATION.	Rock Excavation. Cub. Yds.	Earth Excavation. Cub. Yds.
162x00 to 178x40	7,874.00	168x60 to 171x50	165.25	110.87
184x10 " 184x65	29.72	176x70 " 186x00	245.55	1,289.61
185x30 " 187x30	135.67	200x25 " 210x00	1,778.89	585.28
187x80 " 206x50	14,102.44	217x20 " 221x00	476.46	288.42
214x37 " 218x80	387.26	222x75 " 228x00	11.80	11.80
219x30 " 235x10	6,315.35	230x25 " 238x00	3,425.39	16,417.90
237x20 " 275x20	45,308.50	254x20 " 259x50	.....	7,116.69
276x20 " 289x25	13,448.74	275x00 " 277x06	.....	8,803.14
295x60 " 296x50	130.1	288x40 " 305x50	4,882.15	11,949.17
304x60 " 317x85	15,650.88	317x00 " 340x00	.....	57,114.35
327x63 " 327x75	6.94	346x00 " 347x50	.....	1,366.66
329x18 " 334x65	4,048.70	359x85 " 360x78	.....	81.92
338x40 " 361x80	35,060.30	361x88 " 363x00	.....	184.46
362x25 " 369x30	1,054.03	368x00 " 372x71	.....	1,858.67
372x50 " 375x50	3,299.90	375x33 " 379x00	.....	1,189.77
377x60 " 380x00	175.48			
	146,526.41		10,481.99	102,692.05
Add 12½ p. c.	16,315.80			10,481.90
	161,842.21			113,174.01
162x00 to 296x50	87,229.18	165x60 to 305x50	10,481.99	40,916.25
Add 12½ p. c.	10,903.64			10,481.99
	98,132.82			51,398.27
Add borrowing .	46,784.55			98,182.82
	144,807.37		Borrowing .	46,784.55
304x60 to 334x65	20,706.52	317x00 to 337x00		45,049.35
Add 12½ p. c.	2,588.31			23,294.83
	23,294.83		Wash.	21,754.52
338x40 to 380x00	39,590.71	337x00 to 380x00		16,726.42
Add 12½ p. c.	4,948.84			44,539.55
	44,539.55		Borrowing .	27,813.13
	144,867.37			
	189,406.92	Total Excavation in cubic yards.		



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EXHIBIT "K 1."

Section 19, Intercolonial Railway.—Crib-Wharfing. Detail Measurement from Cross Sections.

STATION.	Dimensions. Feet.	Area in each.	Total Area.	Mean Area.	Dist. Ft.	Cub. Feet.	Cub. Yds.
340	13x6	39	69				
"	2 6x5	30					
341	7x5	35	171	120.0	100	12,000	
"	20x10	100					
"	2 12x8	36					
342	10x6	60	210	190.5	100	19,050	
"	25x12	150					
343	2 12x5	60	285	247.5	100	24,750	
"	30x15	225					
344	2 15x6	90	315	300.0	100	30,000	
"	30x15	225					
345	2 14x7	98	315	315.0	100	31,500	
"	31x14	217					
346	2 14x6	84	294	304.5	100	30,450	
"	30x14	210					
347	2 10x6	60	268	278.5	100	27,850	
"	29x14	203					
348	2 13x5	65	261	262.0	100	26,200	
"	28x14	196					
349	2 13x6	78	247	254	100	25,400	
"	26x18	169					
350	2 14x6	84	309	278	100	27,800	
"	30x15	225					
351	2 14x5	70	294	301.5	100	30,150	
"	32x14	224					
352	2 16x6	96	360	327.0	100	32,700	
"	33x16	264					
353	2 15x7	105	330	245.0	100	34,500	
"	30x15	225					
354	2 14x6	84	348	339.0	100	33,900	
"	33x16	264					
355	2 9x6	54	204	276.0	100	27,600	
"	25x12	150					
	2					413,850	15,328

Copy of detail measurement of crib-wharfing from station 340 to 355, I. C. Railway.
APRIL 16th, 1880,

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EXHIBIT "M. 1."

ARTICLES of agreement made and concluded this first day of August, in the year of Our Lord one thousand eight hundred and seventy-one, between Thomas Boggs, of the City and County of Halifax, in the Province of Nova Scotia, Merchant; John Robert Murray, of Halifax, aforesaid, Merchant; and Robert P. Mitchell and Stephen D. Oakes of Restigouche, in the Province of New Brunswick, Railway contractors and constructors on Section number nineteen of the Intercolonial Railway, of the first part; and John C. McKenzie, David Munroe, Alexander McDonald, John F. McDonald and Albert P. Penery, of Metapedia, in the County of Bonaventure and Province of Quebec, Railway contractors of the second part.

Whereas, The said parties of the first part having undertaken and become responsible for the construction and completion, according to contract with the Government of the Dominion of Canada, of that section of the Intercolonial Railway of Canada, designated and known as section number nineteen of the said Intercolonial Railway line, have contracted with the said parties of the second part for the construction and completion by them of a certain part or portion of said section number nineteen, commencing at the lower end of section number eighteen, now being constructed by Robert H. McGreevy, and ending at station number one hundred and sixty-two, comprising two hundred stations of one hundred feet each, as shewn upon the engineer's plan of said section number nineteen; and both parties have agreed on the following articles of agreement, in the faithful performance of which they mutually bind and engage themselves each to the other, their executors and administrators. 10 20

First the said parties of the second part for and in consideration of the sum hereinafter mentioned and specified to be paid unto them, their executors or administrators, and for and upon the other consideration following, do for themselves, their executors and administrators, promise and agree to and with the said parties of the first part, their executors, administrators and assigns, that the said parties of the second part or their assigns shall and will in a good and workmanlike manner built or construct the before mentioned two hundred stations of railway line, excepting however the building of culverts and mason work in general.

And the parties of the first part do covenant and agree with the parties of the second part to pay to them in the currency of the Dominion of Canada for the different descriptions of work as follows:—Ninety-five cents per cubic yard for rock excavating, twenty-three cents per cubic yard for earth excavating, eighty-five cents per cubic yard for building and filling in the crib-wharfing, and one dollar and fifty cents per cubic yard for rip-rap work when the rock must be borrowed and taken to the place of building, but when the cuttings on the line furnish the necessary rock no pay will be given, but it is understood and agreed upon that all rock necessary to be hauled a distance of two thousand feet will be considered as borrowed, and the parties of the first part bind themselves to pay the above mentioned one dollar and fifty cents per yard even if such rock should be taken from the line of work. 30 40

And again the said parties of the first part agree and bind themselves to pay to the parties of the second part fifty dollars per acre for all grubbing necessary to be

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done and twenty dollars per acre for chopping and clearing the line when such description of work may be needed, as well as one dollar and twenty-five cents per yard for all good building stone taken from the line of work. This is in addition to the price already mentioned for excavating rock.

And it is further agreed that the parties of the second part shall receive from the parties of the first part a lump sum of forty dollars for building all culverts needed on the road diversion and five dollars for every one hundred cubic feet of under draining necessary to be done on the line of work.

All temporary bridges built where culverts are to be made will be built at the expense of the parties of the first part.

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The parties of the first part further agree to supply the parties of the second part with what cedar they now have on hand at the rate of two and a half cents per running foot, the same to be delivered at the works without any additional charge.

Payments will be made once every month for all work done in the previous month, the parties of the first part however retaining fifteen per cent. until the completion of the whole work, as security for the faithful carrying on of the within contract by the parties of the second part, but it is understood and agreed upon that the above mentioned fifteen per cent. so retained will be paid to the parties of the second part at or before the expiration of sixty days from the completion of the work herein mentioned, which shall not be considered completed until the engineer has first pronounced it so and taken it off the hands of the parties of the second part.

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And, finally, it is agreed that the work must be done to the satisfaction of the resident engineer, upon whose decision the parties contracting bind themselves to rely in any matter pertaining to the proper carrying on of the work, and the liability of the party of the second part to forfeit said contract for non-performance of duty or negligence to use necessary force and diligence to bring the work to a satisfactory and timely termination, but in case the engineer considers it expedient to deal only with the parties of the first part in reference to the carrying on of the work, or our liability to forfeit contract for neglect or non-performance of duty, then we bind ourselves to abide by the decision of the party of the first part, after satisfactory proof first having been given us that said decision is a just and true reflection of the mind and will of the resident engineer; and the parties of the second part bind themselves to discharge any workmen who may be guilty of committing any unjustifiable breach of the peace or in any other manner conduct himself improperly upon the request of the resident engineer as the parties of the first part. And the parties of the second part further agree to be governed and controlled by the rules and regulations mentioned in the original contract between the parties of the first part and the Dominion Government which shall not interfere with the foregoing contract.

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And the parties of both parts hereby agree that the conditions of this contract shall be considered binding from the first day of June in the present year.

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And in conclusion, it is further agreed between the two contracting parties that the parties of the first part shall pay to the parties of the second part the sum of seventy

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cents per cubic yard of earth for all excavation made in that portion of the work termed the road diversion

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first within mentioned.

Signed, sealed and delivered
in presence of

CHAS. S. ARCHIBALD.

THOMAS BOGGS, [L.S.]

By his Attorney, John R. Murray.

JOHN R. MURRAY, [L.S.]

R. P. MITCHELL, [I.S.]

S. D. OAKES, [L.S.]

J. C. MCKENZIE, [L.S.]

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DAVID MUNRO, [L.S.]

ALEX. McDONALD, [L.S.]

JOHN F. McDONALD, [L.S.]

A. P. PENERY, [L.S.]

EXHIBIT ' A. 2. '

[HEADED IN THE CAUSE.]

I, Alexander McDonald, of Truro, in the County of Colchester, at present of Halifax, in the County of Halifax, a contractor, one of the above-named plaintiffs, make oath and say that the statements and allegations contained in the writ issued herein the 20th day of March, instant, and hereto annexed are true in substance and fact.

(Sg'd.) ALEX. McDONALD. 20

Sworn at Halifax, in the County of Halifax,
this 20th day of March, A. D. 1876, before me.

(Sg'd.) M. I. WILKINS,

Com. Sup. Court, Co of Halifax.

COLCHESTER, SS.

IN EQUITY.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c. &c.

TO THE SHERIFF OF THE COUNTY OF HALIFAX OR TO ANY OTHER OF OUR
SHERIFFS:

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We command you to summon John R. Murray, Esquire, William W. Groom, merchant, assignee under the Insolvent Act of 1875 of said John R. Murray, an Insolvent, both of the City and County of Halifax, Richard B. Boggs, of Amherst, in the County of Cumberland, Esquire, and Charles Beverly Bullock, of Halifax, aforesaid, Barrister, Executors of the last will and testament of Thomas Boggs, late of

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Halifax, in the County of Halifax, merchant, deceased, Robert P. Mitchell, contractor, and Stephen D. Oakes, contractor, both of Halifax, aforesaid, and Israel Longworth, of Truro, in the County of Colchester, Esquire, Trustees of John R. Murray, to appear in the Supreme Court at Truro within twenty days after the service of this writ at the suit of Alexander McDonald and Thomas G. McMullen, who say that articles of agreement dated the first day of February, A. D., 1872, were entered into by and between the said Thomas Boggs, the said John R. Murray, Robert P. Mitchell and Stephen D. Oakes, of the first, and John C. McKenzie, the said Alexander McDonald and Frankfort Davis, of the other part, which said articles of agreement are in the words and figures following, that is to say :—

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Articles of Agreement made and concluded this the first day of February, in the year of Our Lord one thousand eight hundred and seventy-two between Thomas Boggs, of the City and County of Halifax, in the Province of Nova Scotia, merchant, John Robert Murray, of Halifax, aforesaid, merchant, and Robert P. Mitchell and Stephen D. Oakes, of Metapedia, in the Province of Quebec, Railway contractors and constructors on section number nineteen of the Intercolonial Railway of the first part and John C. McKenzie, Alexander McDonald and Frankfort Davis, of Metapedia, in the Province of Quebec, Railway contractors, of the second part.

Whereas, the said parties of the first part having undertaken and become responsible for the construction and completion, according to contract with the Government of the Dominion of Canada of that section of the Intercolonial Railway of Canada, known as section number nineteen of said railway, have contracted with the said parties of the second part for the construction and completion by them of all work now remaining to be done on that portion of said section number nineteen, commencing at the lower end of section number eighteen, now being constructed by R. H. McGreevy, Esq., and ending at station number one hundred and sixty-two, comprising two hundred stations, as shown upon the engineer's plan of said section number nineteen, and both parties have agreed on the following articles of agreement to the faithful performance of which they mutually bind and engage themselves, each to the other, their executors and administrators.

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First, the said parties of the second part for and in consideration of the sums herein-after mentioned and specified to be paid into them, their executors or administrators, and for and upon the other conditions following, do for themselves, their executors and administrators promise and agree to and with the said parties of the first part, their executors, administrators and assigns that the said parties of the second part or their assigns shall and will in a good and workman-like manner and according to the directions and to the entire satisfaction of the engineer in charge, build or construct the before mentioned portion of work on said portion of said section number nineteen, excepting however the building the fence and bridge at Gilmore's brook.

And for and in consideration of such work, the said parties of the first part do bind themselves to pay or cause to be paid unto the said parties of the second part the following schedule of prices for the different descriptions of work to be done, as is comprised in the contract, viz :—

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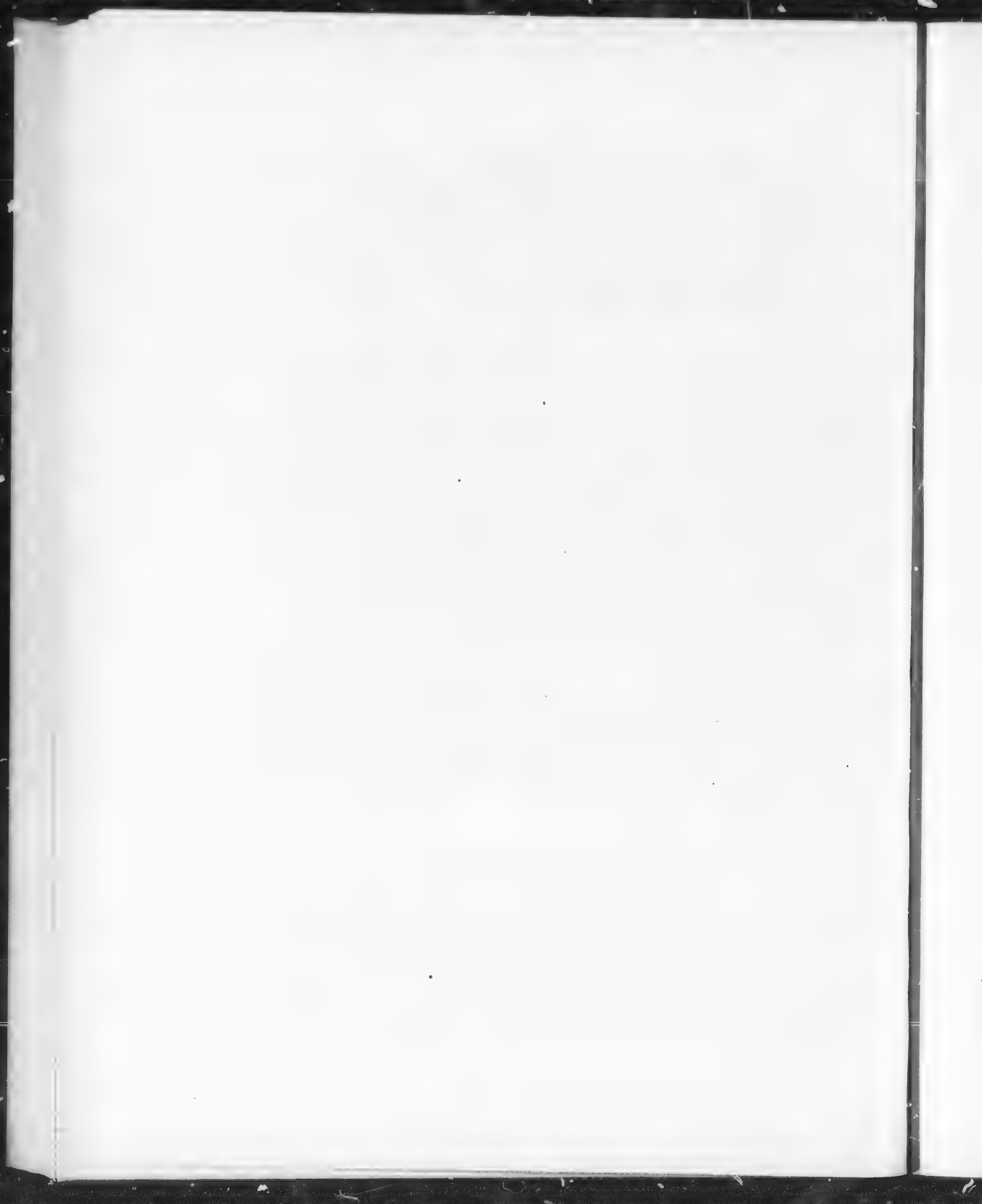
Rock excavation per cubic yard (ninety-five cents).....	\$ 0 95
Earth excavation per cubic yard (twenty-three cents).....	0 23
Masonry, 1st and 2nd class, per cubic yard (eleven dollars)..	11 00
Crib-wharfing per cubic yard (eighty-five cents).....	00 85
Rip-rap when rock is to be borrowed or hauled two thousand feet, per cubic yard (one dollar and fifty cents)..	1 50
Grubbing per acre (fifty dollars).....	50 00
Clearing per acre (twenty dollars).....	20 00
Under drains per hundred cubic feet (five dollars)	5 00

And it is further agreed to by the parties hereto that the said parties of the 10 second part pay to the said parties of the first part two and a half cents per running foot for building logs now lying on their works and owned by the said parties of the first part; and the parties of the second part further agree to be governed and controlled by the rules and stipulations mentioned in the original contract between the parties of the first part and the Dominion Government, so far as they do not interfere with this contract; and further, the said parties of the second part bind themselves to the said work to the satisfaction of the said resident engineer and to rely upon his decision in any matter pertaining to the proper carrying on of the work, and the liability of the said parties of the second part to forfeit this contract for non-performance of duty or neglect to use necessary force and diligence to bring the work to a satisfactory and timely termination, but in case the engineer considers it expedient to deal with the parties of the 20 first part in reference to the carrying on of the work or liability to forfeit this contract for neglect or non-performance of duty, then the parties of the second part bind themselves to abide by the decision of the parties of the first part.

And it is further agreed upon by the parties hereto, that if the parties of the second part wish for any changes to be made, either in description of work or quantities or location of line, between stations two hundred and forty-seven and two hundred and fifty-nine, and stations three hundred and forty-one and three hundred and fifty-five plus fifty, and then such changes shall not increase the present liabilities of the parties of the first part, but the parties of the second part shall receive an amount 30 equal to what the crib-wharfing and excavations will cost, as the quantities of each are now shown on the Engineer's plan within the afore-mentioned stations.

And the parties of the first part further agree to pay unto the parties of the second part fifty cents per cubic yard for earth excavation in foundation, and one dollar and fifty cents per cubic yard for rock excavation in foundations.

And it is finally agreed upon that cash payments be made once each month for work done in the month previous as returned by the Engineer, the parties of the first part retaining fifteen per cent. until the completion of the whole work as security for the faithful carrying out of the within contract, the fifteen per cent. so retained to be paid to the parties of the second part at or before the expiration of sixty days after 40 the completion of the work herein mentioned, which shall not be considered completed until the Engineer has first pronounced it so and taken it off the hands of the parties of the second part.



In witness whereof, the parties to these presents have interchangeably set their hands and seals this the day and year first above written.

Signed, sealed and delivered in presence of

(Sgd.) ANDREW CRANE,

Witness to first two signatures.

(Sgd.) CHARLES S. ARCHIBALD,

Witness to five last signatures.

(Sgd.) THOS. BOGGS,

" JOHN R. MURRAY,

" R. P. MITCHELL,

" STEPHEN D. OAKES,

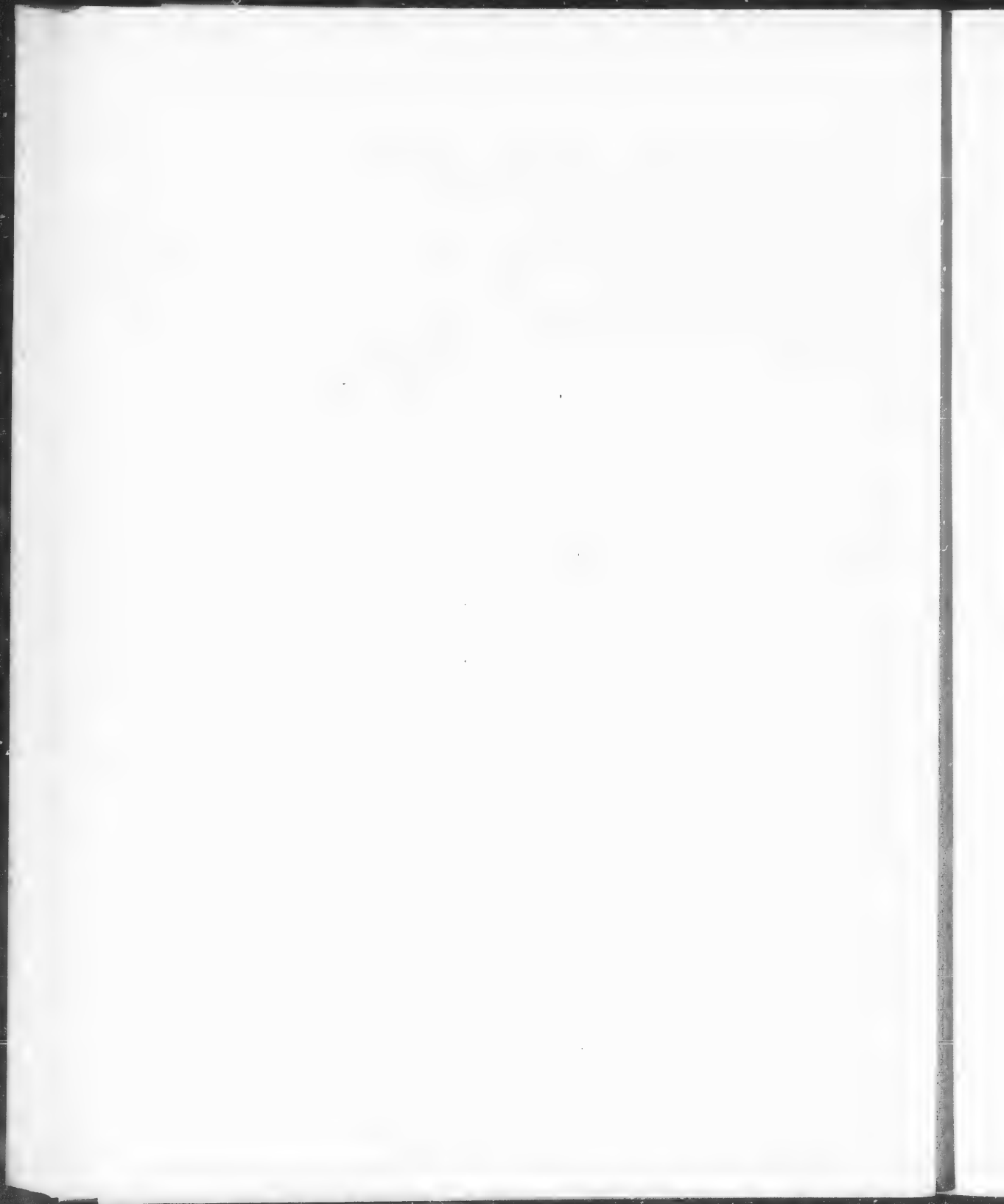
" J. C. MCKENZIE,

" ALEX. McDONALD,

" FRANKFORT DAVIS.

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That the said Thomas Boggs, John R. Murray, Robert Mitchell, Stephen D. Oakes mentioned in said agreement are the said Thomas Boggs, John R. Murray, Robert P. Mitchell, Stephen D. Oakes respectively, and the said Alexander McDonald is the said plaintiff. That, by deed dated the 23rd September, 1870, the said Alexander McDonald purchased a lot of land situate in Truro, in the County of Colchester, and became seized and possessed of said land, which said deed was recorded in the Registry Office 20 at Truro, on the 2nd October, 1870, in *Libro 50, folio 426*. That on the first of October, 1870, the said Alexander McDonald and his wife mortgaged the said land to Edward Smith for twelve hundred dollars, the principal of which said mortgage is still due and unpaid, which said mortgage was recorded in said Registry Office on the 22nd October, 1870, in *Libro 50, folio 459*. That a Writ of Attachment was issued on the 27th day of May, 1872, under the Absent or Absconding Debtors' Act, at the suit of the Truro Boot and Shoe Manufacturing Company against said Alexander McDonald and others, endorsed for \$724.00 and upwards, under which said attachment said land was levied upon, and which attachment was registered on the 31st May, 1872, in said Registry Office, in *Lib. E., folio 470*, and that said Truro Boot and Shoe 30 Manufacturing Company, in said suit, thereafter recovered judgment against said Alexander McDonald for the sum of \$828.90, debt and costs, which said judgment, dated June 13th, 1873, was recorded in said Registry Office on the 17th June, 1873, in *Lib. E., folio 567*. That a Writ of Attachment was issued the 28th May, 1872, under said Absent or Absconding Debtors' Act at the suit of James Caffrey and Gardner Clish, against said Alexander McDonald and others, endorsed for \$109.20, under which said attachment said land was levied upon under said Act, and which said attachment was registered in said Registry Office on the 4th of June, 1872, in *Lib. E., folio 477*, and that said James Caffrey and Gardner Clish in said suit thereafter recovered judgment against said Alexander McDonald and others, for the sum of 40 \$168.45, debt and costs, which said judgment, dated June 13th, 1873, was recorded in said Registry Office, on the 17th June, 1873, in *Lib. E., folio 568*. That a Writ of Attachment was issued the 3rd of June, 1872, under said Absent or Absconding Debtors' Act, of the suit of Patrick O'Mullin and John O'Mullin against said Alexander Mc-

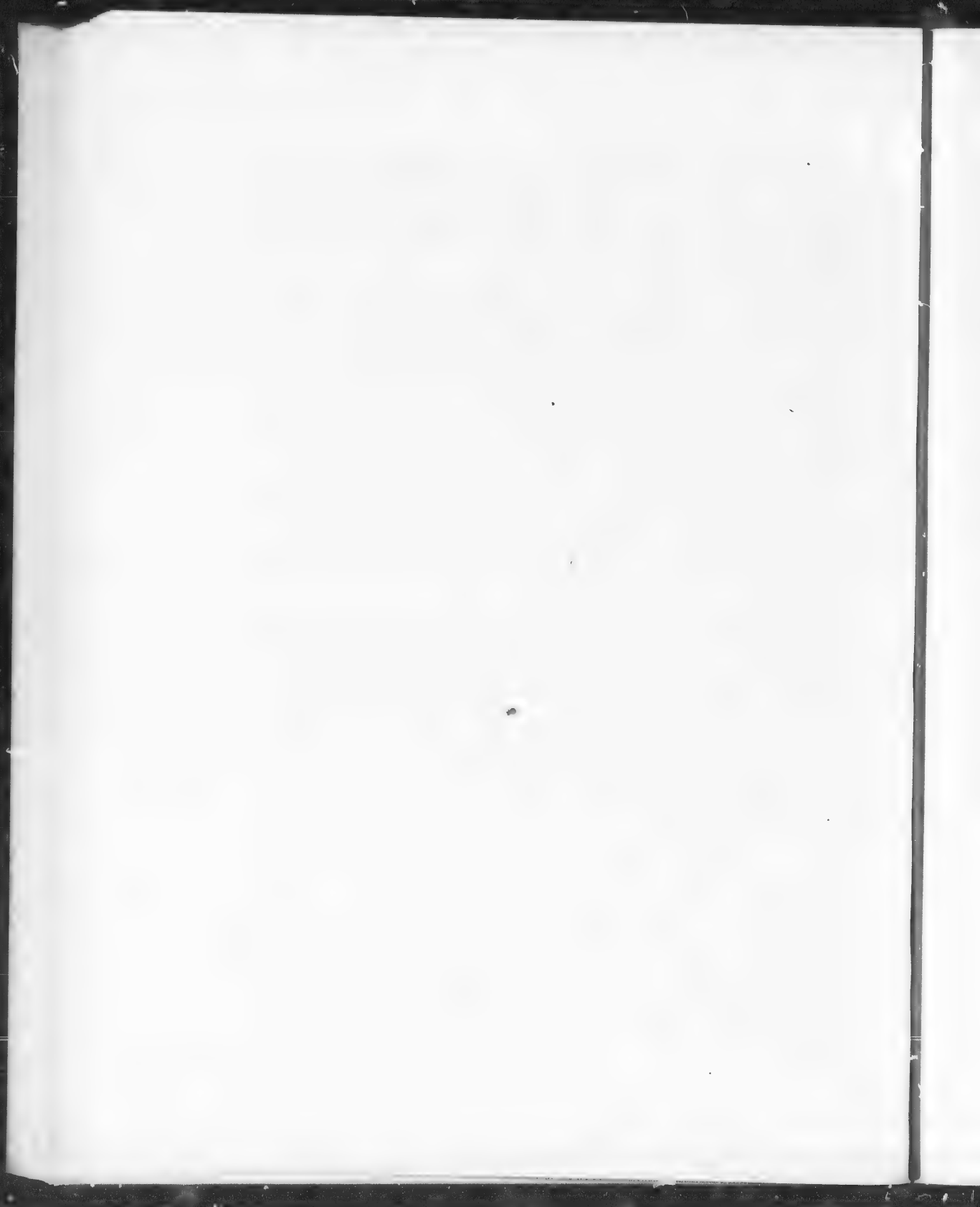


Donald and others, endorsed for \$511.20, under which said attachment said land was levied upon, and which said attachment was registered in said Registry Office on the 5th of June, 1872, that the said Alexander McDonald, the now plaintiff, desiring to relieve the said land from said attachment, put in and perfected special bail under said Act to respond the judgment, and a Judge of the Supreme Court, by an order in said suit, ordered that the said land be relieved from said attachment in said last mentioned suit under said Act.

That a Writ of Attachment was issued the 13th June, 1872, under said Act, at the suit of Robert O'Mullen against said Alexander McDonald and others, endorsed for \$1663.47, under which said attachment said land was levied upon under said Act, 10 and which said attachment was registered in said Registry Office on the 5th June, 1872, in *Lib. E., folio 472*; that the said Alexander McDonald, the now plaintiff, desiring to relieve the said land from said attachment, put in and perfected special bail under said Act to respond the judgment under said Act, and a Judge of the Supreme Court by an order in said last mentioned suit, ordered that the said land be relieved from the said attachment in said last mentioned suit under said Act.

That the said Alexander McDonald gave a confession of judgment to Thomas Boggs and John R. Murray, then carrying on business as merchants in Halifax, under the style and firm of Thomas Boggs and Company, for ten thousand dollars, and the said judgment dated 17th June, 1872, for ten thousand dollars debt and sixteen dol- 20 lars costs, was entered up in Truro aforesaid, and recorded in the said Registry office on the 18th June, 1872, in *Lib. E., folio 487*.

That by Indenture of Assignment, dated 13th March, 1875, made between said John R. Murray of the one part, and Israel Longworth of the other part, after reciting the said last mentioned judgment and that said Robert O'Mullen had recovered a verdict in said suit hereinbefore mentioned in which Robert O'Mullen was plaintiff and said Alexander McDonald and others were defendants against said Alexander McDonald for \$1663.49, and that a rule *nisi* had been taken out under the statute on filing bail to respond the judgment upon said rule *nisi*, and after reciting that, exception had been taken to said bail, and that said John R. Murray had agreed to 30 assign the said judgment to the said Israel Longworth, to hold the same in trust as further security, in addition to said bail to respond the judgment on said rule *nisi*, the said John R. Murray did sell, assign, transfer, and set over unto the said Israel Longworth the said judgment upon the trust, upon said rule *nisi* being discharged or abandoned, to sell, assign or dispose of the said judgment or to issue execution thereupon, and to take and use all means and process to recover and collect the amount due upon said judgment, and by execution or otherwise, or to grow due thereon and out of such sums of money to arise from such rule or otherwise realized under said judgment, to pay to said Robert O'Mullen the said sum of \$1663.49 and costs to be 40 taxed and interest from date of verdict, and the costs that the said Israel Longworth should be put to under the judgment thereby assigned, and to pay over the residue to said John R. Murray or such persons as he might direct, and in case the said rule *nisi* should be made absolute, then to reconvey said judgment to said John R. Murray, which said Indenture of Assignment was recorded in said Registry office on the 8th May, 1875, in *Lib. 57, folio 526*.



That by an assignment dated 19th June, 1875, after reciting the said judgment recovered by the said Truro Boot and Shoe Manufacturing Company against said Alexander McDonald and others, the said Truro Boot and Shoe Manufacturing Company did thereby grant, assign, transfer and set over unto the said John R. Murray the said judgment, last mentioned, recovered by them and herein before mentioned, which said judgment was recorded in said registry office on the 25th June, 1875, in *Lib. 57, folio 724*.

That by an assignment dated the 19th June, 1875, after reciting the said judgment recovered by the said James Caffrey and Gardner Clish against the said Alexander McDonald and others, the said James Caffrey and Gardner Clish did thereby 10 grant, assign and set over unto said John R. Murray the said judgment, last mentioned, recovered by them and hereinbefore mentioned, which said assignment was recorded in said registry office on the 25th June, 1875, in *Lib. 57, folio 725*.

That by deed bearing date the 17th August, 1875, the said Alexander McDonald and wife conveyed the said land to the said Thomas G. McMullen, which said deed was duly recorded on the 17th August, 1875. That after the date of the said judgment for \$1,016, the said Thomas Boggs departed this life on or about the 27th of March, 1873, and Richard B. Boggs and Charles Beverly Bullock aforesaid, are executors of his last will and testament.

That since the said assignments the said John R. Murray became an insolvent 20 within the meaning of the Insolvent Act of 1875, and the said William W. Groom was duly appointed assignee of said John R. Murray under said Act, and now is such assignee as aforesaid.

That shortly after the said parties of the second part commenced the building and construction of the said works under the said articles of agreement as co-partners under the name of McKenzie, McDonald & Co., the said John C. McKenzie became insane and unable to work and retired from the said work and thereafter, about a year after said agreement, the said Frankfort Davis mentioned in said agreement retired from said co-partnership, the said Alexander McDonald having purchased his interest therein, and thereafter the said Alexander McDonald carried on the said work alone under said articles under the name and firm of McKenzie & McDonald and became solely entitled to the profits arising from said work. 30

That shortly after the work was commenced under said articles of agreement, the said Alexander McDonald gave a confession of judgment to the said Thomas Boggs and John R. Murray for ten thousand dollars at the request of said Thomas Boggs and John R. Murray, who gave said Alexander McDonald a letter dated 14th June, 1872, addressed to said Israel Longworth, requesting him to enter such judgment, which said letter is in the words and figures following, that is to say,

OFFICE OF THOMAS BOGGS & Co.,

HALIFAX, N. S., June 14, 1872.

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ISRAEL LONGWORTH, Esq.,

DEAR SIR,—The bearer, Mr. Alexander McDonald, has taken a sub-contract from us on our section (No. 19) of the Intercolonial Railway at Metapedia, and as security

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wishes to give us a confession of judgment, which you will please have executed in our favor for the sum of ten thousand dollars ; please have it recorded as is customary with such documents. If a mortgage on his property is any better security, Mr. McDonald will give it for our benefit.

Yours truly,
(Sg'd.) THOMAS BOGGS & CO.

That the sub-contract on section No. 19 of the Intercolonial Railway at Metapedia mentioned in said letter is the contract contained in the articles of agreement first herein set out.

That said Israel Longworth being absent from home, another attorney caused said judgment to be entered up, and on the 17th June, 1872 the said judgment was entered up for ten thousand dollars debt and sixteen dollars costs, as such security as aforesaid, which said judgment is the judgment hereinbefore mentioned of that date, recorded on the 18th June, 1872, in *Lib. E, folio 457*. That by an agreement dated 5th August, 1873, the said Alexander McDonald, under the said firm of McKenzie, McDonald & Co., assigned and delivered up to said Robert P. Mitchell and Stephen D. Oakes that portion of the work under said contract on section number 19 of the Intercolonial Railway, beginning at station number 337 and extending westwardly to the end of said section, comprising all the work on said portion of said section number 19, excepting the building of masonry, free from all actions of damages or charges that may be brought against said work and commencing at the date whereon W. H. McKeil commenced work at said place, to wit, the twelfth of November, 1872. That the said W. H. McKiel, in the said month of November, 1872, had taken a sub-contract from said Alexander McDonald of the said portion of work last herein mentioned and described in said last mentioned agreement, he, the said W. H. McKiel, paying the said Alexander McDonald the sum of \$1,900 out of the profits of said sub-contract ; and the said W. H. McKiel, in payment for said portion of said work, drawing from the said Robert P. Mitchell and Stephen D. Oakes the proportion of the pay for that portion of the work, and paying Alexander McDonald the said sum of \$1,900. That said McKiel finished said work, and said Mitchell and Oakes charged Alexander McDonald with the sum paid said McKiel, about \$126.75, and gave said Alexander McDonald credit for said \$1,900. That said portion of said work performed by said McKiel, was a small part of the whole work mentioned in said articles of agreement.

That the said Alexander McDonald carried on, under said articles of agreement, the said work of building and constructing the said portion of work on said portion of said section number 19, under the directions of the resident engineer appointed to superintend said work, he, the said Alexander McDonald, receiving various cash payments at the end of each month, and from time to time, on account of said work, from the said Thomas Boggs, John R. Murray, Robert P. Mitchell and Stephen D. Oakes, but not in full, for the work done in the month previous to each of said months. That in the month of August, 1873, the said cash payments due were not furnished or paid to the said Alexander McDonald for the work so done in the month of July, 1873, and the said Thomas Boggs, John R. Murray, Robert P. Mitchell and Stephen D. Oakes did not, nor did either of them, furnish or pay to the said Alexander Mc-

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Donald any cash payments on account of said work during the month of August, 1873, and that sometime in September, 1873, when three-fourths at least had been performed under said articles of agreement, the said Alexander McDonald, on account thereof, and for not receiving any cash payments for work done by him during the said month previous thereto under said articles of agreement, was obliged to arrange with said Robert P. Mitchell and Stephen D. Oakes, that they, the said Mitchell and Oakes, should have control and management of the said portion of the work mentioned in said first articles of agreement, with power to take possession of and complete the said work, the said Alexander McDonald paying unto them out of the moneys payable to him previously for said work, a sum equal to the monthly expenditure for the completion of said work. That said Alexander McDonald continued the work under said arrangement, and was charged one thousand dollars by said Mitchell and Oakes for services of said Mitchell in relation to said arrangement superintending said work, and said work was so carried on by said Alexander McDonald from said month of September, 1873, until the work was completed and finished under said contract. 10

That the said Alexander McDonald built and constructed the said portion of work on said portion of said section in a good and workmanlike manner, and according to the directions and to the satisfaction of the resident engineer, and said work was taken off his hands by said resident engineer as completed in the month of October, A. D., 1874; and the said Alexander McDonald was always willing and ready to perform the said contract with said Murray, Boggs, Mitchell and Oakes on his part, and did perform the same except so far as he was prevented from so doing by the said Murray, Boggs, Mitchell and Oakes' breach of the said agreement hereinbefore mentioned. That the amount of work actually done by said Alexander McDonald under said agreement is as follows:— 20

250807	cub. yds. earth excavation actually done, at 23 c...	\$ 57685 61	
9650	" rock " at 95 c.....	9167 50	
1938	" masonry at \$11.00.....	21318 00	
1930	" earth foundation at 50 c.....	965 00	30
Clearing	2½ acres at \$20.00	50 00	
Levelling	foundation.....	50 00	
Pumping	.....	1000 00	
Road diversions	.....	1836 00	
Catch water drains	.....	955 50	
Rock excavations in drains	.....	9 50	
Packing stone round culverts	.....	300 00	
Crib wharfing performed second time in consequence crib-wharfing having been washed away by freshets.....		1000 00	
Crib-wharfing actually built 28390, at 85 c.....		24139 15	40
Rip-Rap 5369, at \$1.50		8053 50	
		<u>\$126529 76</u>	

That under said articles of agreement the said Alexander McDonald on account of a change made by him in the location of the line by which he performed more earth excavation than he otherwise would have done, and would but for said change

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have been obliged to have performed more crib-wharfing and thus changing the description of the work, is advised that he is entitled to charge the said Thomas Boggs, John R. Murray, Robert P. Mitchell and Stephen D. Oakes for an amount less than the foregoing amount by about four thousand dollars; that the items of pumping, \$1000, and packing stone around culverts, \$300, although not included in said articles of agreement were necessarily performed by said Alexander McDonald in connection with said work, and it was verbally agreed that this work should be paid for to him.

That with the exception of the said four thousand dollars, the said Alexander McDonald alleges that he is entitled to charge the said sum of one hundred and twenty- 10 six thousand five hundred and twenty-nine dollars and seventy-six cents, the sum total of the said work performed by him, against the said John R. Murray, the said Richard B. Boggs and Charles Beverly Bullock, executors of said Thomas Boggs, and the said Robert P. Mitchell and Stephen D. Oakes.

That although sixty days have elapsed since the completion of the work mentioned in said agreement, neither the said Thomas Boggs, during his lifetime, nor his executors since his death, nor the said John R. Murray, nor the said assignee since his insolvency, nor the said Mitchell, nor Oakes, nor any person on their behalf has paid to the said John C. McKenzie, Alexander McDonald, or Frankfort Davis the prices for the work done by him, the said Alexander McDonald, under the said articles of agreement and 20 due to the said Alexander McDonald, and have not paid the fifteen per cent. which was retained by them each month on the moneys payable to the said Alexander McDonald for the work performed in each month by him under said articles of agreement; but only a portion of said prices have been paid by them, and said Alexander McDonald alleges that a large balance or sum of money is due and owing to him from the said Murray, the said Richard B. Boggs and Charles Beverly Bullock, executors of said Thomas Boggs, and said Mitchell and Oakes on account of the work performed by him under said articles of agreement, and he is willing to give them credit for every sum of money, or set-off which they may have against him, and are lawfully entitled to charge him with; but which on account of the complicated state of their affairs and transactions, 0 and the disputes existing between them and him, and on account of some of the parties to said articles of agreement seeking to charge him with moneys and goods, furnished to him as separate transactions apart from said contract, he has no means of ascertaining with accuracy, but he alleges that the said balance or sum of money due to him as aforesaid, is upwards of twenty thousand dollars, and may be found to be much larger on an account being taken

That the said Judgment, with interest and costs of the said Truro Boot and Shoe Manufacturing Company, and James Caffrey and Gardner Clish have been all paid to the said Truro Boot and Shoe Manufacturing Company, and James Caffrey and Gardner Clish. and are satisfied, although not entered as satisfied, and the said Truro Boot and 40 Shoe Manufacturing Company and the said Caffrey and Clish have no interest in either of them, and are not selling the land under these judgments.

That the said judgments, interests and costs have been paid by said Alexander McDonald and by said Thomas G. McMullen for said Alexander McDonald, with the

exception of the sum of four hundred and fifty-eight dollars and thirty-three cents or thereabouts, which was paid by said John R. Murray, surviving partner of said Thomas Boggs and Company, on account of the judgment of the Truro Boot and Shoe Manufacturing Company, and charged by him to said Alexander McDonald, and the said John R. Murray has received the sum of two hundred and eighty dollars due for rents arising from said land for which said Alexander McDonald is entitled to be credited.

That the said judgment of ten thousand dollars was only given as collateral security and was not for a debt or any part of a debt due to said Thomas Boggs and John R. Murray by said Alexander McDonald.

That the said Israel Longworth and Robert O'Mullen at the time of the assignment 10 of said judgment for \$10,016.00 knew that said judgment was only given to said John R. Murray and Thomas Boggs as such security as aforesaid and that it was without consideration at said time.

That said Israel Longworth has given notice in the *Royal Gazette* newspaper of the sale of said land for the 27th of March, instant, under the said three judgments, that is to say, the said judgment of the Truro Boot and Shoe Manufacturing Company, the said judgment of James Caffrey and Gardner Clish and the said judgment of Thomas Boggs and John Robert Murray, and three executions issued on said judgments which said executions have been issued the 21st February last, passed for the full amounts of said judgments with interest on each, and subsequent costs have been issued as aforesaid by 20 said Israel Longworth, as the attorney of the plaintiffs in each suit.

That although the said Thomas Boggs has died since the said judgment for \$10,016.00, the execution issued upon said judgment is issued in his name as well as that of said John R. Murray, who has also become insolvent since said judgment and without a writ of revivor order to enter a suggestion of said death, and that said John R. Murray is entitled to execution. That before this suit, the said Israel Longworth has been asked on behalf of said Alexander McDonald for whom he was acting in the sale of the said lands under said executions, and he has answered for Robert O'Mullen, of whom he is such trustee as aforesaid, and for one Samuel Rettie and Thomas G. McMullen, and said Robert O'Mullen has no interest in the two smaller judgments afore- 30 said. That said Samuel Rettie has now no interest in any of said judgments, and said Thomas G. McMullen never gave any authority to said Israel Longworth to sell said lands under any of said judgments.

That the said John R. Murray having become insolvent, and the said Mitchell and Oakes unable to pay their liabilities, the said Alexander McDonald fears that they will not be able to pay the amount sought to be recovered herein.

That the sale of the said land, which, if from all incumbrances, is now worth between five and six thousand dollars, under the three said executions upon the said judgments, at the same time, would greatly embarrass the said Thomas G. McMullen and prejudice his interest under the circumstances hereinbefore set out, and he has no 40 other adequate means of protecting his interest, and the plaintiffs allege that there is no adequate remedy at law.

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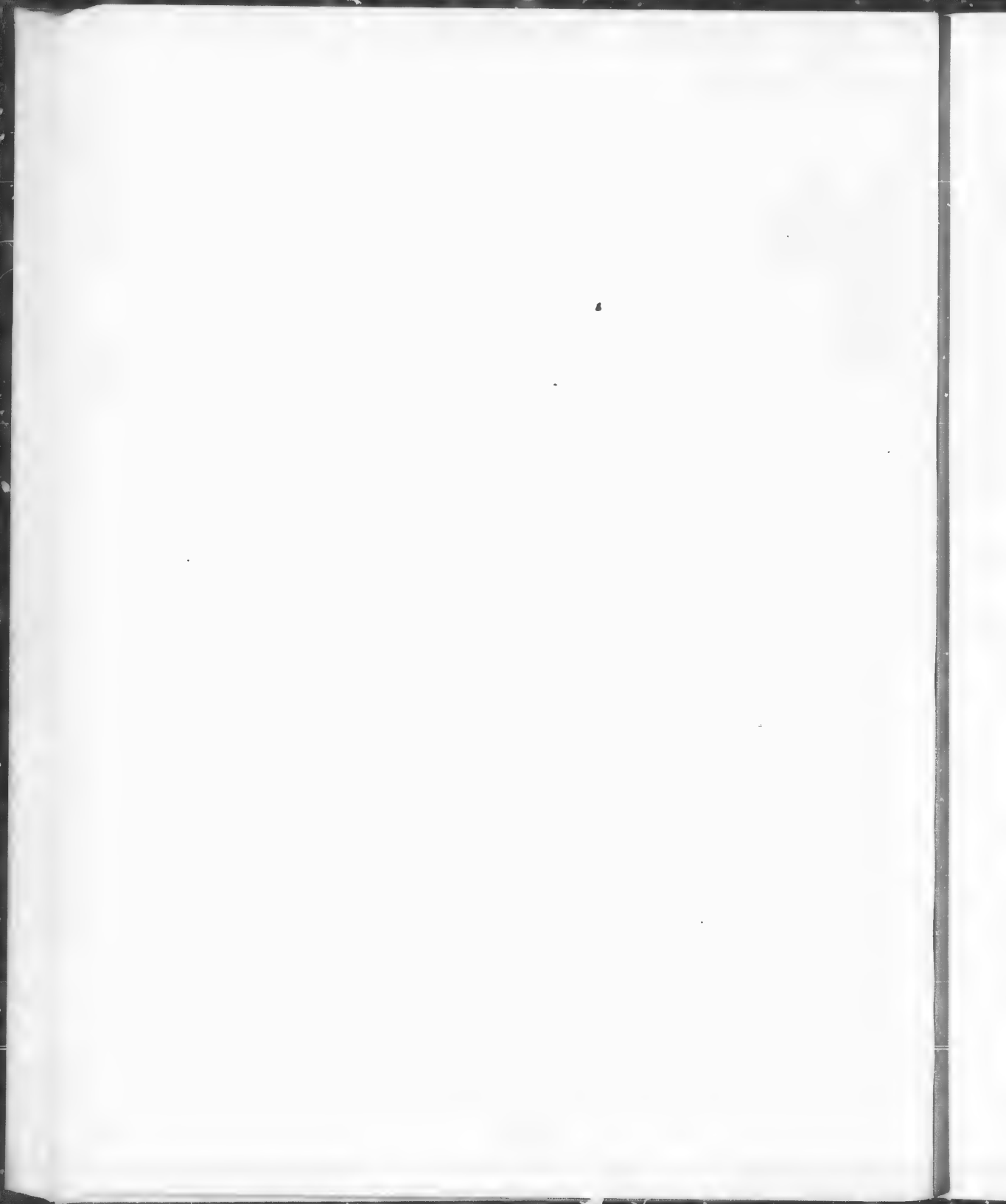
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They, therefore, humbly pray that an account may be taken of the amount due to the said Alexander McDonald under the said articles of agreement, and that the said Richard B. Boggs and Charles Beverly Bullock, Executors, as aforesaid, and John R. Murray, Robert P. Mitchell and Stephen D. Oakes may be decreed and ordered to pay to the said Alexander McDonald the amount found to be due to him for said work under said agreement. That an injunction may issue to restrain the said Israel Longworth or any of the said defendants from selling said land or taking any further proceedings on said judgments or executions, or otherwise, and if said land be sold by the said Israel Longworth under said executions, that he may be decreed and ordered to hold the proceeds thereof in trust for said Thomas G. McMullen, to be paid to said 10 Thomas G. McMullen when the amount due to said Alexander McDonald herein shall be ascertained, and that said judgments may be released and that the defendants may answer the matters herein fully under oath.

Issued at Halifax, this 20th day of March, A. D., 1876.

M. I. WILKINS,
Prothonotary.

WALLACE GRAHAM,
Plaintiff's Attorney.



(COPY.)

EXHIBIT "E 2."—J. W. J.

CRIB-WHARFING.

1600	.....	12	.....	16	.....	1137
1250	.....	12	.....	18	.....	1000
450	.....	12	.....	18	.....	360
1000	.....	14	.....	20	.....	1030
						3527

EXHIBIT "D D D."—J. W. J.

Interest statement McKenzie, McDonald & Co. in account with Thos. Boggs & Co.

Dr.

From 1872 to 31st December, 1872

			TIME.	AMOUNT. 10
Jan'y. 1.	.....	\$ 621 55	12 months	\$ 37 29
	.....	1,690 55	12 "	101 40
May 16.	.....	1,738 19	137 days.	39 13
June 18	.....	76 75	104 "	1 31
July 31	.....	1,300 00	5 months.	32 50
Aug. 14	.....	81 15	47 days.	62
31	.....	349 13	31 "	1 76
"	.....	762 50	122 "	15 27
"	.....	1,793 50	122 "	35 95
"	.....	200 00	122 "	4 01 20
Sept. 3	.....	80 90	27 "	35
30	.....	1,505 05	92 "	22 75
Oct. 19.	.....	13 77 4,413 00	19 "	
28	.....	58 127 25	28 "	
31	.....	800 00	61 "	8 02
Nov. 9	.....	3 95 603 23	40 "	
30	.....	1,000 90	31 "	5 10
Dec. 31	.....	600 00	" "	
18 30 carried to other side.				

1873.

\$305 46 30

Jan'y. 1.	To balance of interest paper	.....		116 24
" 1.	" 31st July, 1873.	6,524 09	7 months.	228 34
" 31.	" " "	919 55	6 "	27 60
Feb'y. 28.	" " "	1,047 50	5 "	26 20
Mar. 26.	" " "	167 00	1 "	83
31.	" " "	1,250 00	4 "	25 00
April 30.	" " "	700 00	3 "	10 50
May 9.	" " "	6.98 4,696 86	9 days.	
	" " "	2,064 08	2 months.	20 64
June 30.	" " "	1,524 95	1 "	7 62 40
6.98 carried to other side.				

346 78

Aug. 1. To balance of interest paper 228 45

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1872.

			TIME.	AMOUNT.
July 12.	Cash	\$2,518 00	5 months.	\$62 95
Aug. 31.	"	2,706 00	4 "	54 12
Sept. 30.	"	2,200 00	3 "	33 00
Oct. 31.	"	1,397 00	2 "	13 97
Nov. 14.	"	1,376 00	1 "	6 88
Dec. 31.	"	1,140 00	1 "	

\$170 92

Cr. interest on other side 18 30

Balance of interest to date 116 24\$305 46 10

1873.

Jan'y. 31.	Cash	1,145 00	6 months.	34 35
Feb'y. 28.	"	1,000 00	5 "	25 00
March 31.	"	1,000 00	4 "	20 00
April 30.	"	717 50	3 "	10 75
May 31.	"	1,358 00	2 "	13 58
June 30.	"	1,535 00	1 "	7 67
July 31.	"	2,327 00		

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Cr. interest on other side 6 93

Balance of interest to date 228 45\$346 73 20

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EXHIBIT "A".—J. W. J.

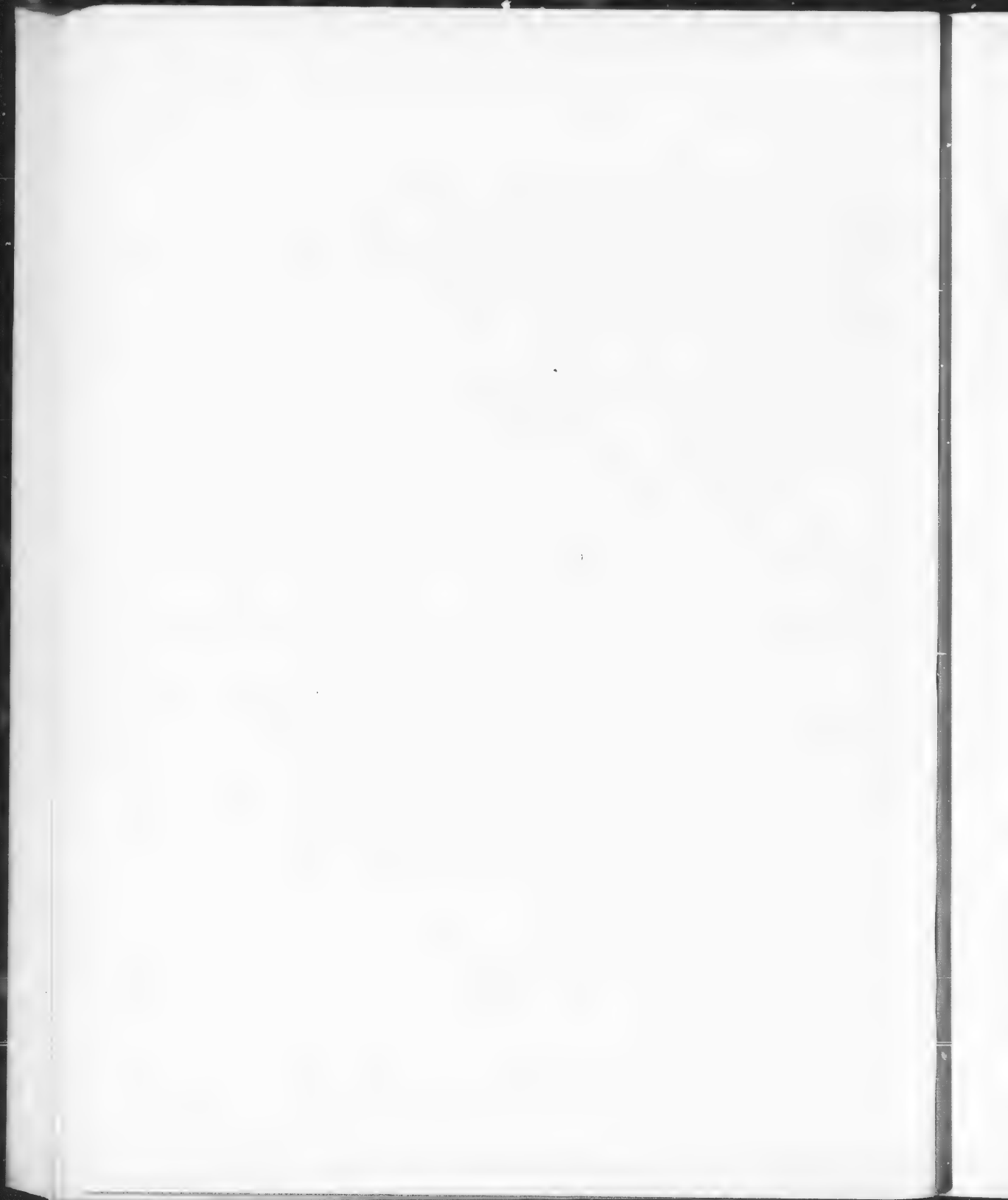
ARTICLES of Agreement made and concluded this the first day of February, in the year of our Lord, one thousand, eight hundred and seventy-two, between Thomas Boggs of the City and County of Halifax, in the Province of Nova Scotia, merchant, John Robert Murray, of Halifax, aforesaid, merchant, and Robert P. Mitchell and Stephen D. Oakes, of Metepadia, in the Province of Quebec, railway contractors, and contractors on section number nineteen of the Intercolonial Railway, of the *first part*, and John C. McKenzie, Alexander McDonald and Frankfort Davis, of Metapedia, in the Province of Quebec, railway contractors, of the *second part*.

Whereas, the said parties of the first part having undertaken and become responsible for the construction and completion according to contract with the Government of the Dominion of Canada, of that section of the Intercolonial Railway of Canada, known as section number nineteen of said Railway, have contracted with said parties of the second part for the construction and completion by them of all work now remaining to be done on that portion of said section number nineteen, commencing at the lower end of section number eighteen, now being constructed by R. H. McGreevy, Esq., and ending at station number one hundred and sixty-two, comprising two hundred stations, as shewn upon the Engineer's plan of said section number nineteen, and both parties have agreed on the following articles of agreement, to the faithful performance of which they mutually bind and engage themselves each to the other, their executors and administrators.

First.—The said parties of the second part, for and in consideration of the sums hereinafter mentioned and specified to be paid unto them, their executors or administrators, and for and upon the other conditions following, do, for themselves, their executors and administrators, promise and agree, to and with the said parties of the first part, their executors, administrators and assigns, that the said parties of the second part, or their assigns, shall and will, in a good and workmanlike manner and according to the directions, and to the entire satisfaction of the Engineer in charge, build or construct the before-mentioned portion of work on said portion of said section number nineteen—excepting, however, the building of fence and bridge at "Gilmour's Brook."

And in consideration of such, the said parties of the first part do bind themselves to pay, or cause to be paid, unto the said parties of the second part, the following schedule of prices for the different descriptions of work to be done as is comprised in this contract, viz:—

Rock excavation, per cubic yard (ninety-five cents).....	95
Earth " " (twenty-three cents).....	23
Masonry, first and second-class, per cubic yard (eleven dollars).....	11 00
Crib-wharfing, per cubic yard (eighty-five cents).....	85
Rip-rap, when rock is to be borrowed or hauled two thousand feet, per cubic yard (one dollar and fifty cents).....	1 50
Grubbing, per acre (fifty dollars).....	50 00
Clearing, per acre (twenty dollars).....	20 00
Under-drains, per hundred cubic feet (five dollars).....	5 00



And it is further agreed to by the parties hereto, that the said parties of the second part pay to the said parties of the first part two and a half cents per running foot for building logs now laying on their works and owned by the said parties of the first part.

And the parties of the second part further agree to be governed and controlled by the rules and stipulations mentioned in the original contract between the parties of the first part and the Dominion Government, so far as they do not interfere with this contract.

And further, the said parties of the second part bind themselves to do said work to the satisfaction of the resident Engineer, and to rely upon his decision in any matters pertaining to the proper carrying on of the work, and the liability of the said parties of the second part to forfeit this contract for non-performance of duty or neglecting to use necessary force and diligence to bring the work to a satisfactory and timely termination, but in case the Engineer considers it expedient to deal only with the parties of the first part in reference to the carrying on of the work, or liability to forfeit this contract for neglect or non-performance of duty, then the parties of the second part bind themselves to abide by the decision of the parties of the first part.

And it is finally agreed upon that cash payments be made once each month for work done in the month previous, as returned by the Engineer, the parties of the first part retaining fifteen per cent. until the completion of the whole work, as security for the faithful carrying out of the within contract—the fifteen per cent. so retained to be paid to the parties of the second part at or before the expiration of sixty days after the completion of the work herein mentioned, which shall not be considered completed until the Engineer has first pronounced it so and taken it off the hands of the parties of the second part.

In witness whereof, the parties to these presents have, interchangeably set their hands and seals this the day and year first above written.

Signed, sealed and delivered in presence of

ANDREW GRANT,
Witness to the first two signatures.

Witnessed five last signatures—
CHAS. ARCHIBALD.

(Sg'd.) THOS. BOGGS.
" JOHN R. MURRAY.
" R. P. MITCHELL.
" STEPHEN D. OAKES.
" J. C. MCKENZIE.
" ALEX. McDONALD.
" FRANKFORD DAVIS.



EXHIBIT "W."—J. W. J.

And it is further agreed upon by the parties hereto, that if the parties of the second part wish for any changes to be made either in description of work or quantities or locations of line between stations two hundred and forty-seven and two hundred and fifty-nine, and stations three hundred and forty-one and three hundred and fifty-five + fifty, then such changes shall not increase the present liabilities of the parties of the first part, but the parties of the second part shall receive an amount equal to what the crib-wharfing and excavations will cost as the quantities of each are now shewn on the Engineer's plan within the before-mentioned stations.

And the parties of the first part further agree to pay unto the parties of the second 10
part fifty cents per cubic yard for earth excavation in foundations, and one dollar and fifty cents per cubic yard for rock excavations in foundations.

Work, &c., of Alexander McDonald & Co. under Contract M. 1.,
extracted from Accounts 1, 3, 4, 5, 6, 7, 8.

EXHIBIT "1."—J. W. J. (EXTRACT.)

CR.			
Aug. 1.	By excavating 150 cubic yds. rock, at 95cts.....	\$ 142 50	
" "	100 " " at 75 cts.....	75 00	
" "	6600 " earth at 23 cts.....	1,518 00	
" "	2450 " " at 18 cts.....	441 00	20
			\$2,176 50

EXHIBIT "3."—J. W. J. (EXTRACT.)

CR.			
Aug. 31.	By excavating 270 c. yds. rock at 95 cts.....		
" "	400 ditto, at 75 cts.....	\$ 556 50	
" "	7690 earth at 23 cts.....	} 2,128 70	
" "	2000 " at 18 cts.....		
"	culverts on road diversion, \$40.00, and wharfage, \$500.00 ..	540 00	
			\$3,235 20

EXHIBIT "4."—J. W. J. (EXTRACT.) (Acct. dated Sept. 30th.) 30

CR.			
By excavating 5450 cubic yards earth, at 23 cts.....		\$1,253 50	
" " 750 " rock, at 95 cts.....		712 50	
" " 50 " " 75 cts.....		37 50	
" " 1000 " earth, at 18 cts.....		180 00	
" building 1600 cub. yds. crib-wharfing, at 85 cts. — \$1,360.00,			
less \$500.00 paid last mo.....		860 00	
			\$3,043 50

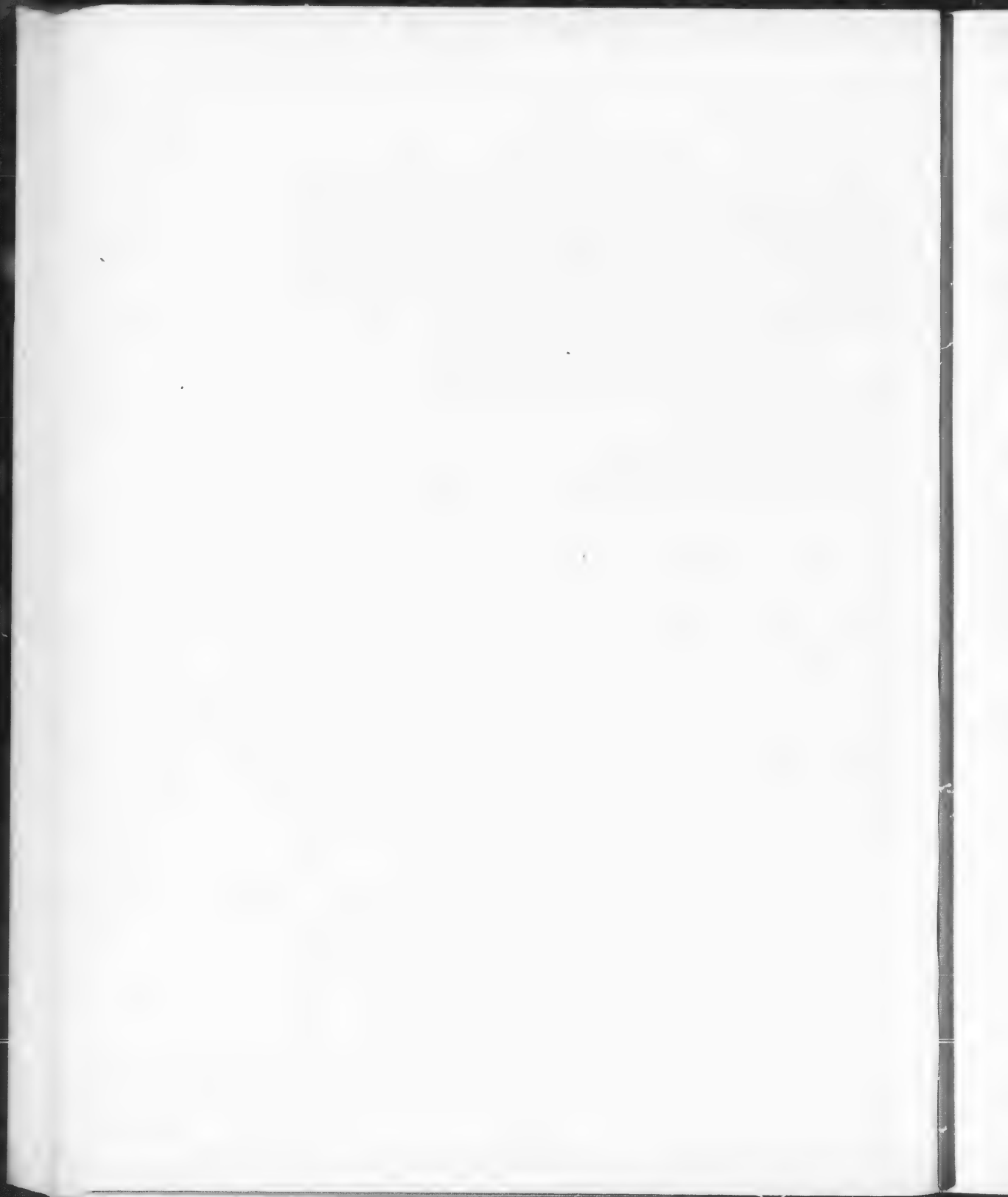


EXHIBIT "5."—J. W. J. (EXTRACT).

CR.

Oct. 31.	By excavating	270 c. y.	rock, at 95 cts.....	\$ 256 50
"	"	70 "	" " 75 cts.	52 50
"	"	3810 "	earth, at 23 cts.	876 30
"	"	1100 "	" " " "	170 80
				\$1,356 10

EXHIBIT "6."—J. W. J. (EXTRACT.)

CR.

Nov. 1.	By building	900 cubic yards	crib-wharfing, at 25 cts.....	£ .35 00	10
"	excavating	3600 cub. yds.	earth, at 23 cts.	828 00	
"	"	270 "	rock, at 95 cts.	256 70	
"	"	400	catch-water drains, 18 cts.....	72 00	
"	posting road diversion.....			80 00	
				\$2,001 70	

EXHIBIT "7."—J. W. J. (EXTRACT.)

CR.

Dec. 1.	By excavating	14 cub. yds.	rock, at 95 cts.....	\$ 133 00	
"	"	4080 "	earth, at 23 cts.	938 40	
"	allowed on cedar logs in woods.....			500 00	20
"	building	140 cub. yds.	crib-wharfing, at 85 cts.....	119 00	
				\$1,690 40	

EXHIBIT "8."—J. W. J. (EXTRACT.)

CR.

Jan. 31.	By excavating	60 cubic yds.	rock, at 95 cts.....	\$ 57 00
"	"	4700 "	earth, at 23 cts.	1,081 00
"	building	705 "	crib-wharfing.....	599 25
"	allowed on cedar			200 00
"	20 cubic yards building stone, at \$1.25.....			25 00
				\$1,962 25

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(EXTRACT.) EXHIBIT "B. B. B."—J. W. J.

Messrs. McKenzie, McDonald & Co. in account with Mitchell & Oakes.

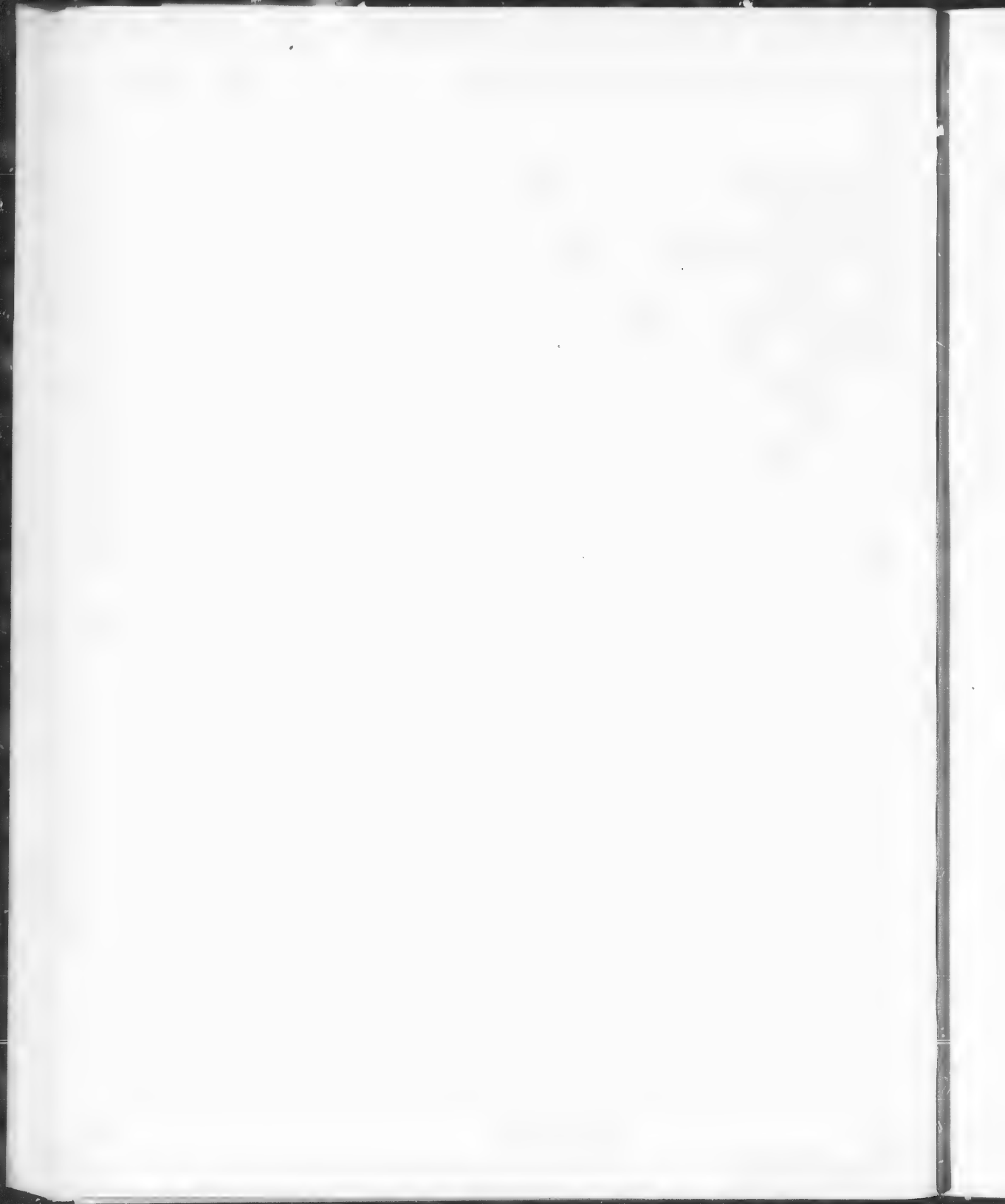
Dr.

Nov. 3.	To amount brought forward.....	\$19,404 63	
	Goods and plant used in your work and as charged on your account to us, Sept. 27, '73 as follows, viz:		
	Furniture in your house.....	60 00	
	Balance ditto in A. McDonald's house.....	30 00	
	5 stoves, \$15.00; sleighs, \$60.00.....	135 00	
	Barns, store and slanties.....	200 00	10
	Washing hose.....	200 00	
	Horses, wagons, harness (balance).....	[400 00]	
	2 derricks, \$200.00, bellows, \$50 00.....	250 00	
	Wear and use of tools on work done by us on your contract, \$16,- 816.70 at 5 p. c.	[840 85]	
	Amount paid A. McDonald & Co. on first contract.....	[17,773 74]	
	Amount paid W. H. McKiel on contract.....	[12,875 00]	
	Cash on warrants, from July, '72 to July, '73.....	20,419 50	
1875.	Amt. progress estimates, as credited in your account monthly..	16,594 21	
Dec. 15.	Superintendence of work by R. P. M.....	[1,000 00]	20
	Paid Thos. Boggs & Co.	[6,000 00]	
	Paid amount E. C. Ennis' account.....	214 70	
	Expenses and costs on ditto.....	175 30	
		\$ 96,372 91	

1874.

Cr.

Feb'y. 14.	By 1 lb. tea.....	60	
April 16	2 kegs powder, \$5.00, 6 coils fuse, 25c.....	11 50	
June 22.	12 lbs. fish, 5c.....	60	
30.	Horse feed to Arsineau, Nov. and Dec.....	25 50	
	Board to men, as per your sheets, March to May.....	152 50	30
	Board and store account rendered to date.....	170 22	
July 31.	Board and store accounts.....	704 00	
Aug. 11.	2 Boxes tobacco (in Bond), 231 lbs., 20c.....	46 20	
19.	2 pairs boots, \$4 50.....	9 00	
31.	Board and store account, this month.....	440 03	
Sept 30.	" " " ".....	564 38	
Oct. 31.	" " " ".....	262 10	
Nov. 3.	Amt. paid W. H. McKiel from Aug. to Nov., '73, as charged in former accounts.....	1,802 20	
	Retained percentage from W. H. McKiel.....	1,900 00	40
Dec. 3.	Total estimates of work done by and for you, as estimated by Engineer.....	[78,940 50]	
Dec. 15.	Witnesses fees on insurance case.....	50 00	
		85,085 38	
	Balance due M. & O.....	\$11,287 53	



HALIFAX, S.S.

EXHIBIT "Z. Z."—J. W. J.

Insolvent Act of 1875.

In the matter of ALEXANDER McDONALD, Claimant,

AND

JOHN R. MURRAY, *Insolvent.*

It is admitted in this contestation that the contestant is entitled to be credited with a balance of \$11,071.67, due to the firm of Thomas Boggs & Co., being difference between a debit of \$37,401.72 against claimant and a credit of \$26,330.05 in his favor, but which does not include the following charges, which the contestant claims to be 10 entitled to off-set in addition.

Nov. 30, '72.	J. F. McDonald & Co., account p. bill.....	\$ 621.55
Dec. 31, '72.	Interest.....	116.24
July 31, '73.	"	228.45
	15 p. c. on estimates is returned by the engineers to 30 June, 1873.....	2858.40
	2 years interest on \$11,575.62.....	1620.60

Also that the contestant is entitled to be credited with the difference between a credit of \$57,683.34 and a debit of \$4244.50 in account with Mitchell and Oakes, but which does not include the following charges which the contestant claims to be en- 20 titled to off-set, viz :

Balance due in horses, waggons and harness.....	\$ 400.00
Wear and use of tools on work done by Mitchell and Oakes on the claimant's contract, \$16,816.70, at 5 p. c	840.83
Amount paid A. McDonald & Co. on first contract.....	17773.74
Superintendence of work by R. P. Mitchell	1000.00
Amount paid W. H. McKiel on contract.....	12675.00

And the following sum, which the claimant claims to be entitled to, be credited with, viz:

Retained percentage from W. H. McKiel.....	\$ 1900.00	30
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These respective set-offs of Thomas Boggs & Co. and Mitchell and Oakes are only admitted on contestant's liability being admitted for the work under the contract.

Above admissions do not include anything for work done under any of the contracts for which claimant claims to be entitled to credit.

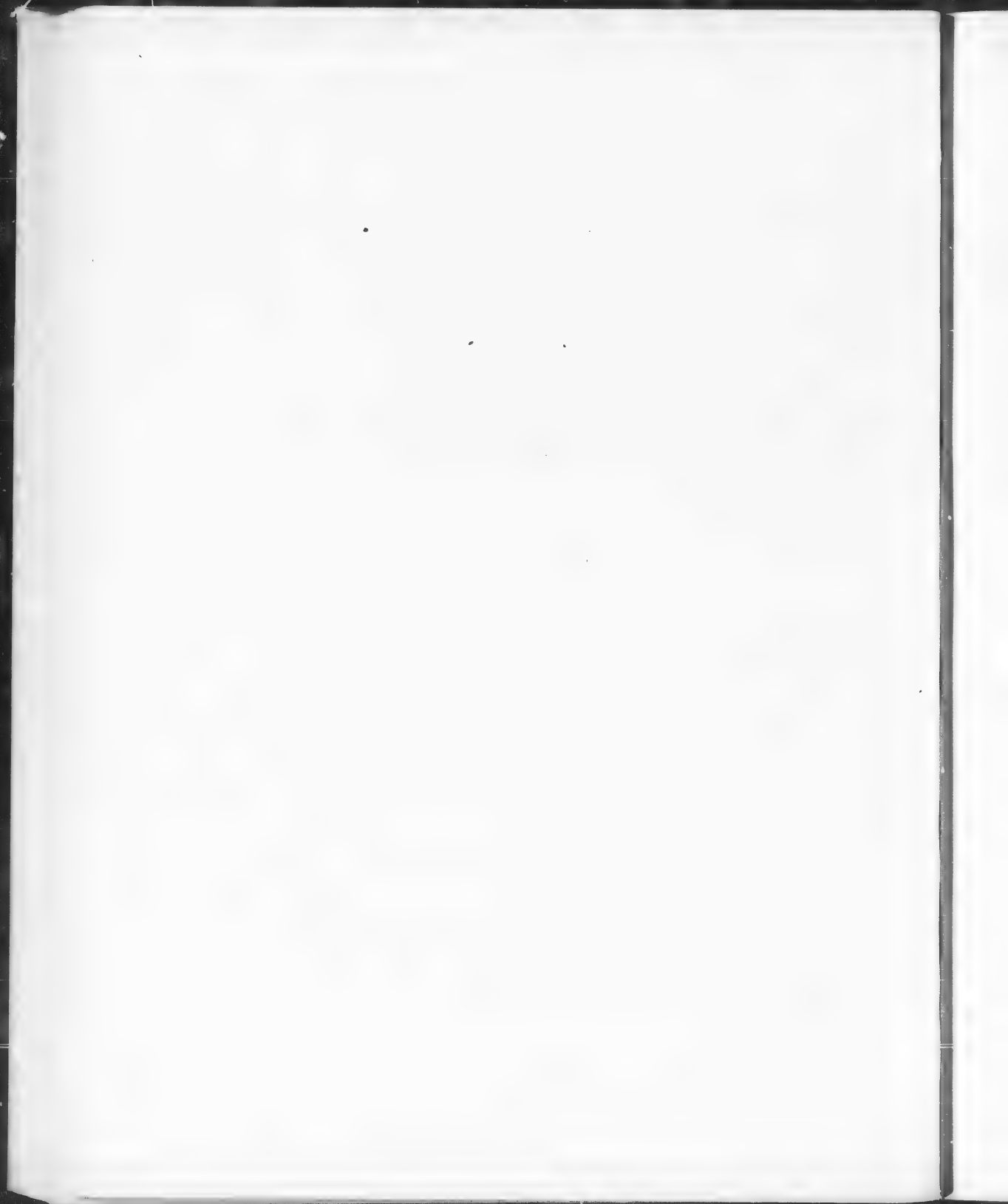


EXHIBIT "C. C. C."—J. W. J.
INTERCOLONIAL RAILWAY.

METAPEDIA, 2nd December, 1874.

The following measurements are made by the undersigned of work done on section 19 by McKenzie, McDonald & Co., sub-contractors, due notice has been taken of the work previously done on this contract by Messrs. Archibald & Vosburg, previous sub-contractors, on same portion of section No. 19.

Total earth.....	155460 c. yds.			
Deduct as above.....	10680 "			
	144780 "	at 23 c.,	\$33299 40	10
Total rock	6537			
" outlets	10			
	6547			
Deduct as above	1170			
	5377 c. yds.	at 95 c.,	5108 15	
Crib-wharfing as built	9907 "			
" original schedule.	13000 "			
	22907 c. yds.,	at 85 c.,	19470 95	
Rip-Rap	770 c. yds.,	(no price)		
Ditto	660 "	\$1.50	990 00	20
Under-Drains	2700 cubic feet	at \$5.00 p. 100f.	135 00	
CATCH WATER DRAINS—				
Earth	2850 c. yds.,	at 23 c.,	655 50	
Rock	10 "	at 95 c.,	9 50	
First-class Masonry	752 "			
2nd "	684 "			
	1436 c. yds.,	at \$11.00	15796 00	
Paving (price adjudicated)	141 "	at \$3.00	423 00	
Excavations in foundations	1930 "	at 50 c.,	965 00	
Allow levelling Rock foundations.....			50 00	110
Clearing say 2½ acres, \$20....			50 00	
ROAD DIVERSION FROM STATION 299 TO 320—				
Earth.....	5550 c. yds.,	at 23 c.,	1276 50	
Rock.....	630 "	at 95 c.,	598 50	
Culverts.....			50 00	
Posting fence for entire length			63 00	
			\$78940 50	

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Seventy-eight thousand nine hundred and forty dollars and fifty cents being the amount ascertained for work done by the said McKenzie, McDonald & Co., between stations 162 and the upper end of this contract, station 380.

Witness—JAMES LOWRIE.

Signed, Metupectia, 8th December, 1874.

JOHN JILLETT.
PETER GRANT.

EXHIBIT "E. E. E."

Know all men by these presents that we Samuel Parker Tuck, of the City of Saint John, in the Province of New Brunswick, in the Dominion of Canada, Civil Engineer, contractor for the construction of section No. 19 of the Intercolonial Rail- 10 way, William Frederick Harrison, of the said City of St. John, merchant, and Thomas Reed, of the said City of St. John, druggist, are held and firmly bound to Her Majesty Queen Victoria, her heirs and successors, in the sum of seven hundred and ninety-one thousand four hundred and sixty-six (\$791466) dollars of lawful money of Canada, to be paid to Her Majesty, her heirs and successors, or her or their assigns, for which payment to be well and truly made, we bind ourselves and each of us binds himself for the whole and every part thereof, our and each and every of our heirs, executors and administrators jointly and severally firmly by these presents, sealed with our seals, and dated the fifteenth day of June, in the year of Our Lord one thousand eight hundred and seventy.

20

Whereas the contractor above named hath in and by, a certain contract in writing, bearing even date herewith, and executed between him and Her Majesty, covenanted and agreed for the consideration therein mentioned to make, build, construct and complete that portion of the Intercolonial Railway known as Section No. 19, as more fully described in the said contract and all the bridges, culverts and other works appertaining thereto, the whole set forth in the said contract and according to the plans and specifications thereof therein referred to.

Now the condition of the above obligation is such, that if the contractor or his heirs, executors and administrators do and shall well and truly observe, perform, fulfill and keep all and every the covenants, clauses, articles and agreements specified and con- 30 tained in the said contract and in the said specification thereunto annexed, which, on the part and behalf of the contractor and his heirs, executors and administrators, is, are and ought to be observed, performed, fulfilled and kept according to the true intent and meaning of the same, then the above written obligation shall be void and of no effect, or otherwise the same to remain in full force and virtue.

Signed, sealed and delivered by the above
named SAMUEL PARKER TUCK, in the
presence of

(Sg'd)

S. PARKER TUCK,
WM. F. HARRISON,
THOMAS M. REED.

(Sg'd) JOHN A. McDONALD.

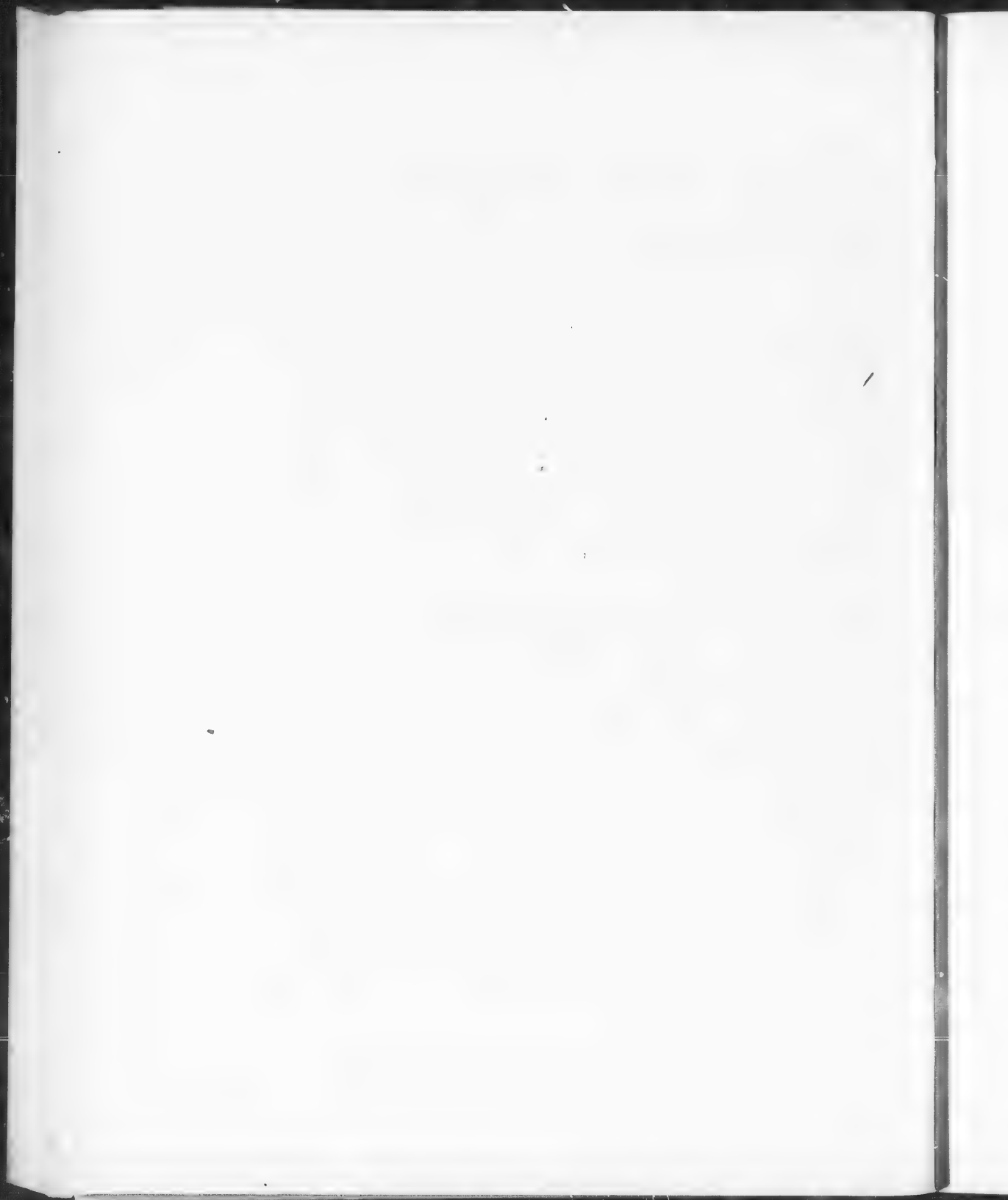
Signed, sealed and delivered by MESSRS.
HARRISON & REID, above mentioned,
in the presence of

(Sg'd) JOHN A. McDONALD.

40

Compared with the original and found correct.

THOS. TAYLOR.



I hereby certify that the foregoing is a true copy of the original Bond executed by Samuel Parker Tick, and sureties to the owner for the fulfilment of a contract for the construction of Contract No. 19, Intercolonial Railway, dated June 15th, 1870, which said original Bond is filed in the Department of Railways and Canals, being one of the departments of Canada.

Dated at the City of Ottawa, this twenty-sixth day of February, A. D., 1880.

T. TRUDEAU,
Deputy Minister of Railways and Canals.

"D."

Order Disallowing Claim.

10

HALIFAX S.S.

IN THE COUNTY COURT AND COURT OF INSOLVENCY FOR THE COUNTY
OF HALIFAX, DISTRICT No. 1.

INSOLVENT ACT OF 1875, AND AMENDING ACTS,

*In the matter of the Estate of JOHN R. MURRAY, doing business as THOMAS
BOGGS & CO., Merchant, an Insolvent,*

AND

ALEXANDER McDONALD, *Claimant,*

AND

JAMES G. FOSTER, Assignee of said Insolvent, *Contestant.*

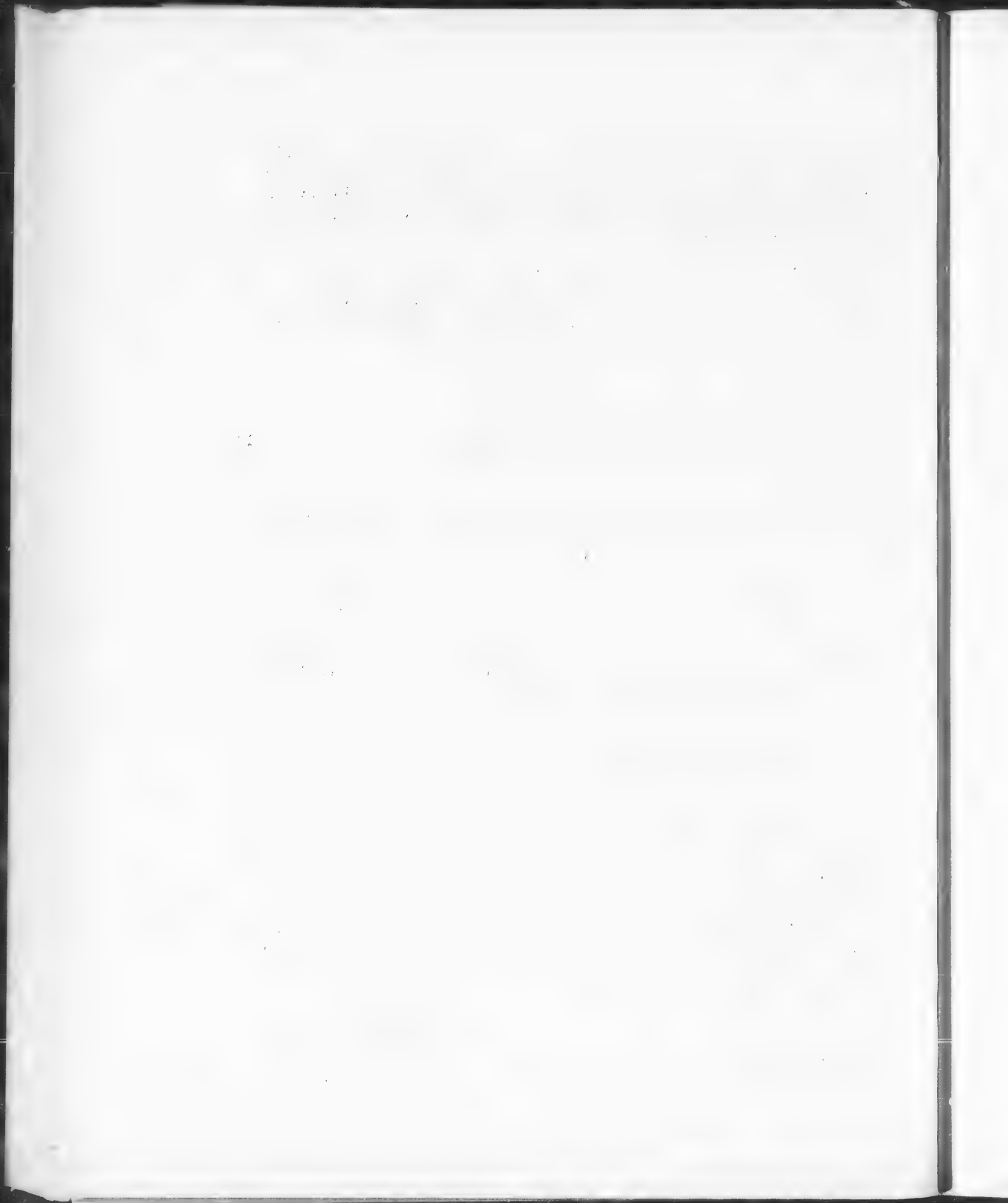
Upon hearing read the claim filed with the Assignee of said Estate by the said 20
Claimant, the objections filed herein and the answer thereto, the evidence produced
herein and the papers put in in evidence after argument and on motion.

I do hereby order that the Claimant's claim be, and the same is, hereby set aside
and disallowed, with costs to be taxed, and I do further order that Execution may issue
for such costs when taxed.

Dated at Halifax, January 24th, 1881.

J. W. JOHNSON,
Judge of County Court.

On motion of Mr. MEAGHER, for the Assignee.



"H."

Judgment of Judge Johnston.

IN INSOLVENCY.

In the matter of JOHN R. MURRAY, Insolvent,

AND

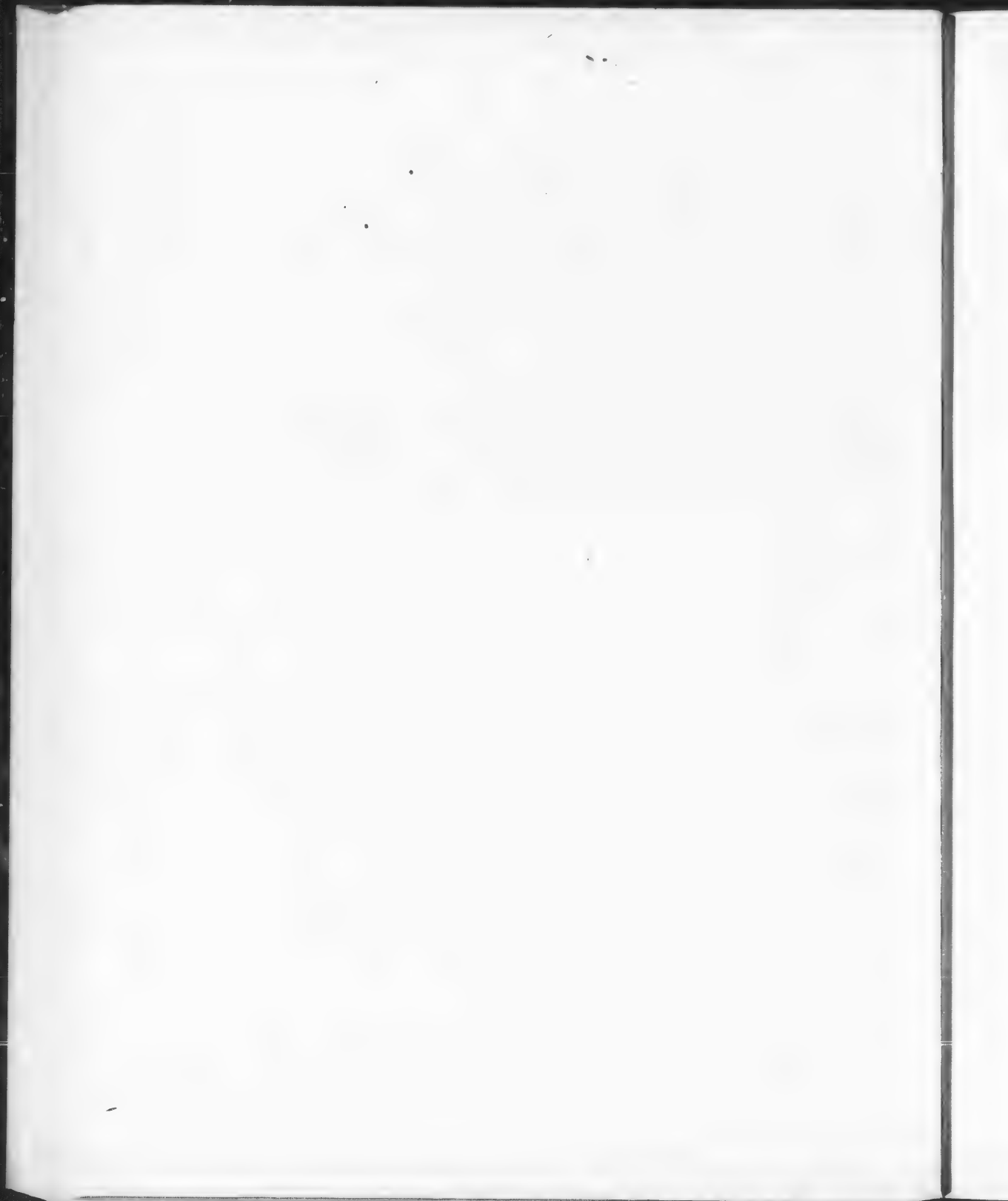
ALEXANDER McDONALD, Claimant.

The claimant filed a claim against the estate of the insolvent in which he swore that the insolvent was indebted to him in \$28,913.96 for work and labor done and materials provided by him for the insolvent on Section No. 19, Intercolonial Railway, at his request as per the account thereto annexed. This claim was filed with and admitted by the assignee, and was contested by the assignee and objections filed, viz :

1. Insolvent not indebted.
2. Payment by insolvent.
3. Claim not in conformity with Insolvent Act. No vouchers.
4. Insolvent never required work to be done.
5. That work was not done, &c.
6. That claim before it had been filed had been assigned to Thomas G. McMullin.
7. That claim had been, by deed, assigned to Robert O'Mullin before claim had been filed.
8. That insolvent was, if liable at all, only jointly liable with others therein named; that the claimant, a sub-contractor, agreed to be bound by the terms and conditions of the original contract, one of which was, that payment was only to be made on the certificate of the engineer for the division; that the work was not done to the satisfaction of the engineer; that the engineer did not certify; that contract was rescinded by agreement, and that claimant failed to perform his part of the contract.
- 9 That contract was rescinded as to the insolvent, and that claimant was indebted to Boggs & Co and Mitchell & Oakes in a larger sum than he claimed, to wit, \$120,727.

To these objections the claimant pleaded the following answers, to wit :

1. A general denial
2. As to 6th objection, that Thomas McMullin was merely a trustee, and that the claimant was the only one beneficially interested.
3. That there was a re-assignment by Thomas McMullin before the claim was filed.



4. As to set off never indebted.
5. That set off was discharged by payment.

The record having been thus completed, the cause was tried before me. A large number of witnesses were examined on the part of the claimant as well as the contestant, and a voluminous body of evidence taken and reduced to writing; in addition to which a large number of witnesses were examined under commission, and contracts, plans, specifications and numerous other documents produced and received in evidence.

I may here say that I very much doubt if the Legislature ever intended that claims so intricate and involved should ever find their way into the Insolvent Court for adjudication, particularly as this Court, having only statutory powers, has not the elasticity possessed by other Courts, and which would seem to be necessary to the doing complete justice between the parties; but with the Act as it is, the claimant was compelled to come to this Court in order to secure any portion of the dividend to which he might be entitled, and being here I am bound to adjudicate upon his claim, leaving any parties who may be either equitably or legally jointly liable with the insolvent to settle the division between themselves as they may be advised, and for the same reason I can allow no weight to the objection that proceedings had been taken in other courts which were still pending a judgment obtained in another court, is subject to be opened and revived in this court on the contestation of a claim.

In reference to the third objection taken *in limine* that the claim was originally filed with the assignee, was not in conformity with the Act and that there were no vouchers annexed thereto and that their absence was not accounted for. I think that the claim conformed to all the requirements of the Act and was rightly received by the assignee, the accounts annexed to the affidavit and forming part of the claim shows the work that was done and the prices charged, and it could hardly be deemed necessary to file annexed to the claim the contract as other agreements under which the work was performed. The vouchers mentioned in sec. 104 of the Act, refers to bills of exchange, promissory notes and other like securities on which the claimant bases his claim, and not to contracts and other documents under which the work for the value of which the claim is filed was performed.

On the trial application was made on behalf of the claimant to amend his claim by adding thereto two fresh items. This application, I was at the time, of opinion I had no power to grant, but in view of the large expense incurred and the time and labour expended in getting up the case, deemed it best to permit the amendment and to receive the evidence in support of the added items, leaving the question to be decided by the Court of Appeal should either party seek to review the judgment I should finally give in the whole case. Subsequent reflection has convinced me that I was correct in the opinion formed in the trial. The claim has to be furnished to the assignee according to a certain form and attested under oath, and on being filed, is considered as proved unless contested, in which case the claim must be established by legal evidence on the points raised. My jurisdiction is thus only appellate, the claim must, in the first instance, have been either received or rejected by the assignee. Had the claimant desired to alter or amend his claim his course was to have filed with the assignee a new or an additional claim attested under oath which the assignee

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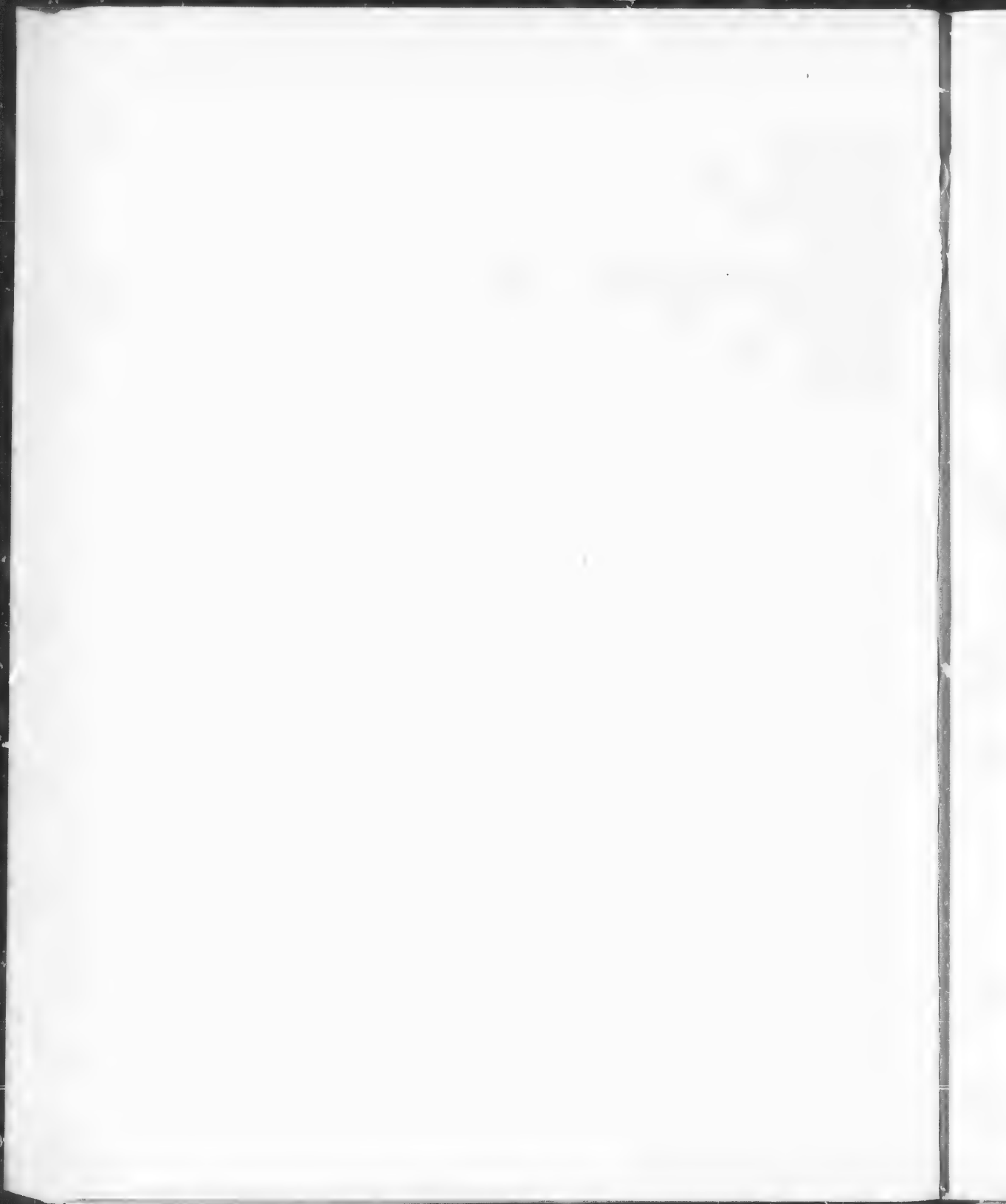
would either have received or rejected and which could have been brought up before me as the original on appeal. I shall, therefore, eliminate items 13 and 14 amended claim from the claim which has to be established before me by legal proof and on which I have to adjudicate. The claim contains 12 separate items. Of these Nos. 4, 6, 7 and 8 are admitted, leaving to be contested Nos. 1, 2, 3, 10, 11 and 12 and No. 5 as to price.

A contract was originally entered into between Samuel Parker Tuck and the Commissioners of the Intercolonial Railway for the construction by him of sec. 19 of the road. Tuck afterwards agreed with Mitchell and Oakes to perform the work on the contract. Subsequently Tuck with the consent of the Commissioners and Mitchell and Oakes transferred to and put in his place in the contract Thomas Boggs and John Robert Murray, then doing business as Boggs and Murray. Boggs has since deceased, and Murray is the insolvent. Boggs and Murray, and Mitchell and Oakes agreed with John McKenzie, Alexander McDonald, the present claimant, and Frankfort Davis to perform certain work on a portion of section 19. Of these Davis is dead and McKenzie left the firm and the work having been bought off, so that the claimant is the only party now interested in this matter. A previous contract had been made between Boggs and Murray, Mitchell and Oakes, and several parties comprising the firm of Alexander McDonald & Co. This firm was broken up, the contract annulled, and the above one with McKenzie, McDonald and Davis, under the firm name of McKenzie, McDonald and Co. entered into and substituted for the previous contract with the firm of Alexander McDonald & Co.

The contract with McKenzie, McDonald and Davis stipulated that they would construct the work according to the direction and to the entire satisfaction of the engineer in charge of the work and also that the payments for the work done should be made as returned by the engineer, 15 per cent. to be retained until the engineer had pronounced the work complete and taken it off the hands of the sub-contractors, who also agreed to be bound by the rules and regulations of the original contract between Boggs and Murray, Mitchell and Oakes and the Dominion Government. The work required to be done under this sub-contract was rock excavation at 95c. per cubic yard, earth excavation at 23c. per cubic yard, masonry, first and second class, at \$11 per cubic yard, crib-wharfing at 85c. per cubic yard, rip-rap, where rock had to be borrowed 2000 feet, \$1.50 per cubic yard, grubbing per acre \$50, clearing per acre \$20, and under drains \$5 per hundred cubic feet.

By the above contract with Boggs and Murray the work was to be done to the satisfaction of the Commissioners and the engineer, and the payments were to be made as the same was provided, to be made under the terms of the original contract between Tuck and the Commissioners of Railways; and this original contract provided that money should be only paid upon the certificate of the engineer that the work had been duly executed, and on the approval of the certificate by the Commissioners, and there was to be no claim for extra work.

From the reading of these several contracts, two things are evident: that no extra was to be allowed for, and second, that the certificate of the engineer must have been first obtained before any money was paid over on account of the sub-contracts.



As I before remarked, this is a statutory Court, and my only duty is to determine whether the claimant's claim is so established as to entitle him to rank on the estate and not take into account or adjust any equitable claim the claimant may have outside of the strict letter of the contract; for any amelioration of the terms of the contract itself or to recover any demand for extra work, etc., the claimant must appeal to another tribunal. Acting on this view, I am bound, by Grant's returns and measurements alone; nor is it open to the claimant in these proceedings to impeach their correctness.

Peter Grant, in reply to the nineteenth interrogatory, deposed that the members of the firm of McKenzie, McDonald & Co. and Alexander McDonald recognized him as the resident engineer under the terms of their contract, and, as far as he was aware, 10 recognized no other. At the trial before me a paper or memorandum attached to the commission was put in, which I marked C. 2, but which in the commission is referred to as B. This paper purports to contain the result of the measurements made by John Jillett and Peter Grant, at the request of Thomas Boggs & Co., contractors, for sec. 19, or their agents, Mitchell & Oakes, and their sub-contractors, McKenzie, McDonald & Co., and to be done in the true spirit and meaning of the contract. This document bears date, Metapedia, 8th Dec., 1874. In reference to this Exhibit B, Grant, in reply to the 14th interrogatory, said: that the Exhibit B relates to the work done by McKenzie, McDonald & Co., on their sub-contract under Mitchell & Oakes, on section 19, Intercolonial Railway; and to the fifteenth interrogatory, that he made the award B un- 20 der no authority, and in performance of no duty, but at the request of A. McDonald and S. D. Oakes, and as a favor to them. And further, that Exhibit B was the last and only award signed by him, and that it was the final award given by him, so far as the work on the sub-contract of McKenzie, McDonald & Co. was concerned, and in his examination before me in reference to B, marked by me C 2, he explained, that he made C 2 after the work was completed, at the request of McDonald and Oakes. That McDonald was preparing to leave Metapedia. That they asked him to make up a final measurement, so that they could settle. That he agreed to do it, and that Jillett was to go into the details. That he understood that his measurements were binding on both parties. That he told them that it was no 30 use his making measurements unless both parties agreed to be bound by it. And he further says that C 2 statement is correct to the best of his knowledge and belief. Oakes corroborates Grant by swearing that he and McDonald told Grant they wished him to make a final measurement. Jillett and Grant agreed to do so and made final measurements. And that McDonald having in the meantime left Metapedia, the certificates were sent to him, Oakes, and that before these proceedings were instituted he gave McDonald a copy, who on its receipt objected, that he ought to have received more for the crib-wharfing, but objected to nothing else. McDonald swears that Oakes never gave him an original paper signed by Grant and Jillett and that he never 40 agreed to be bound by Grant's measurements or to sign any paper agreeing to be bound by them. I think the weight of the testimony is that McDonald agreed to be bound by Grant's measurements and that they were made under his instructions, and that, therefore, he is bound by them, even although no paper to that effect was signed by him.

But, further, I hold that he had no option but to be bound by them. By his contract it was a condition precedent to his receiving payment, that the work should be

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returned by the engineer and that a percentage was to be retained until the engineer had pronounced the work complete and taken it off his hands. If we reject this paper C 2, there are no returns or certificates on which the claimant could recover anything. I therefore think that I am justified in looking upon this paper as equivalent to the returns and the certificate required from the engineer. This paper contains an estimate of the work done on the contract by all the contractors, except that portion done by McKiel, who was paid in full for all his work, and the work done on the section by Archibald and Vosburg previous to the sub-contract; and having no means of distinguishing between the work done by the sub-contractors, I shall consider it all work done by the claimant and charging him the monies paid to J. F. McDonald & Co. 10

The measurements given by claimant in his account annexed to his affidavit and filed as his claim, are largely in excess of the measurements given in by Grant, and there are some items of work not mentioned in claimant's claim, but these I let pass as they have been probably introduced under other headings. Grant returns the sum of \$78,940.50 as the ascertained value of the work done by the claimant under the sub-contract between stations 162 and 380. A statement I marked Z Z containing admissions of payments and off-set were handed in and agreed to by the parties. I have not taken into account the two sums, amount paid McKiel by contestants, and the percentage retained from McKiel claimed by claimant, because his work according to Grant's testimony was kept separate and McKiel had been paid in full for all 20 the work done by him. I do not allow the contestant the amounts he claims due on horses, waggons, &c., nor for the wear and tear of tools, nor Mitchell's charge for superintendence; and I also strike off all the charges for interest, and find that the contestants have paid on account of the sub-contract \$85,764.20, as against their indebtedness of \$78,940.50. I therefore disallow the claim, and give judgment for the contestants with costs.

"F."

Insolvent Act of 1875 and Amending Acts.

IN THE COUNTY COURT FOR THE COUNTY OF HALIFAX, DISTRICT NO. 1.

CANADA,
PROVINCE OF NOVA SCOTIA, }
Co. OF HALIFAX, SS.

In the matter of the estate of JOHN R. MURRAY, *an Insolvent*,

AND

ALEXANDER McDONALD, *Claimant*,

AND

JAMES G. FOSTER, Assignee of said estate, *Contestant*.

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Upon hearing read the petition of the claimant in the above estate herein for an appeal to the Supreme Court of Nova Scotia, the notice of motion and the two several affidavits of service thereof, the evidence taken before me at the hearing of the contestation of the claim herein, the objections to said claim and answers thereto, the papers in the matters before me at the hearing, and motion, I do order that said petitioner have leave to appeal, and leave is hereby granted to them to appeal to the Supreme Court of Nova Scotia, at Halifax, from my judgment, sustaining said objections and overruling and disallowing this claim of the said complainant herein. Security has been filed herein to my satisfaction.

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HALIFAX, January 28th, 1881.

J. W. JOHNSTON,
Judge of Co. Court, District No. 1.

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

OF THE UNIVERSITY OF OXFORD

IN TWO VOLUMES

Order for Amendment of Claim.

INSOLVENT ACT OF 1875, AND AMENDING ACTS.

In the County Court 1880, District No. 1.

HALIFAX S.S.

In the matter of the Estate of JOHN R. MURRAY, an Insolvent,

AND

ALEXANDER McDONALD, *Claimant,*

AND

JAMES G. FOSTER, Assignee of said Estate, *Contestant.*

Upon hearing read the affidavits of Alexander McDonald and Frederick A. Lawrence made herein on the 18th day of March, instant, and on motion, I do hereby order that the claim filed in the above matter be amended by changing item number three (crib-wharfing) from "28,399 cubic yards crib-wharfing at 85 cts., \$24,139," to "43,399 cubic yards crib-wharfing at 85 cts., \$36,889.15," and also by adding to the said claim two items as follows, that is to say:—

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| 13. To levelling rock foundations for 6 culverts at \$100 per culvert..... | \$600 00 |
| 14. Underdrains, 2,700 lineal feet, at \$5.00 per 100 feet..... | 135 00 |

Dated at Halifax, March 19th, 1880.

J. W. JOHNSTON,
Judge Co. Court, Dist. No. 1. 20

On motion of Mr. HENRY for Claimant.